

~~1277~~ No. 3585

1278

United States
Circuit Court of Appeals

For the Ninth Circuit.

AMERICAN TRADING COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

A. T. STEELE,

Defendant in Error.


Transcript of Record.

Upon Writ of Error to the United States Court
for China.

FILED

DEC 1 - 1920

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United States
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In the United States Court for China.

CIVIL JURISDICTION.

Cause No. 798.

Civil No. 272.

A. T. STEELE

VS.

AMERICAN TRADING CO.

Complaint.

The plaintiff complains to this Honorable Court, and for cause of action alleges:

1. That the plaintiff is an American citizen, and the defendant is an American corporation with offices in the city of Shanghai, China, within the jurisdiction of this Honorable Court.

2. By an instrument in writing dated the 27th day of May, 1918, the defendant corporation employed the plaintiff as chief accountant in their Shanghai office for a term of three years, and the plaintiff was to receive for the said period no less than ten thousand gold dollars (\$10,000) for his services. A copy of the said document [1*] is attached hereto and made part hereof as Exhibit "A."

3. That the defendant corporation agreed to pay the plaintiff the aforesaid ten thousand gold dollars (\$10,000) at an exchange rate of fifty-five gold cents to the tael, and seventy-two tael cents to the dollar Mexican (\$1.00). That at the said exchange rate

*Page-number appearing at foot of page of original certified Transcript of Record.

ten thousand gold dollars (\$10,000) are equal to twenty-five thousand two hundred and eighty Mexican dollars (25,280).

4. That among other things, the defendant corporation agreed and promised the plaintiff, and it is the custom, practice and rule of the defendant corporation to allow to its executives and covenanted employees the various amounts, moneys, bonuses, commissions and remuneration set out in Exhibit "B," and the plaintiff is entitled to and should be paid the same.

5. That the defendant corporation wrongfully, improperly and without cause or reason on or about March 17th, 1919, dismissed and discharged the plaintiff, and thereby the defendant has willfully broken the aforesaid agreement and has refused to complete and carry out the said contract, to the plaintiff's great damage. [2]

6. That demand has been made, but the defendant corporation has failed, neglected, and refused, and still fails, neglects and refuses, to pay to the plaintiff the various amounts: Salary, bonus, commission, remuneration and expenses due to the said plaintiff, in accordance with the understanding and agreement made by and between the parties hereto, when the plaintiff accepted employment with the defendant corporation.

WHEREFORE; The plaintiff claims: (a) Thirty-two thousand and seventy-five $36/100$ Mexican dollars (\$32,075.36), as set out in Exhibit "B." (b) For costs of this suit and such other and further relief as this Honorable Court may deem just.

Dated Shanghai, China, July 3d, 1919.

H. D. RODGER,
Attorney for the Plaintiff.

Filed July 3, 1919. (Sgd.) William A. Chapman, Deputy Clerk. [3]

United States of America,
Extraterritorial Jurisdiction in China,
Consular District of Shanghai,—ss.

VERIFICATION.

Hewitt Douglass Rodger, being duly sworn on behalf of the plaintiff in the above-entitled action, says that he has read the foregoing complaint, and knows the contents thereof, that he has a signed statement from the said plaintiff setting out the facts of this case, and the matters complained of and he verily believes the same to be true; that the plaintiff is absent from this district, where his counsel resides, and that the affiant is the plaintiff's attorney, and therefore makes this affidavit.

(Sgd.) H. D. RODGER,
Attorney for the Plaintiff.

Subscribed and sworn to before me, at Shanghai, China, this 3d day of July, 1919.

(Sgd.) WILLIAM A. CHAPMAN,
Deputy Clerk. [4]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING COMPANY,

Defendant.

Plea in Abatement.

Now comes the defendant and respectfully shows to this Honorable Court:

1st. That the contract referred to in allegation 2 of the plaintiff's petition and marked Exhibit "A" was entered into by and between the plaintiff herein and The American Trading Company (Pacific Coast) which said company is duly organized, created and existing by virtue of the laws of the State of California, United States of America.

2d. That the defendant company was organized, ~~created and is existing~~ solely by virtue of the laws of the State of New York and is an entirely separate and distinct company from the American Trading Company (Pacific Coast).

3d. That the defendant company has never entered into any contract whatsoever with the plaintiff herein.

WHEREFORE the defendant prays this Honorable Court that the petition of the plaintiff be dis-

missed and he be allowed to go without day and recover his costs.

(Sgd.) FLEMING, DAVIES & BRYAN,
Attorneys for the Defendant.

R. T. Bryan, Jr., being first duly sworn, says that he is a member of the firm of Fleming, Davies & Bryan, attorneys for the defendant; that he has read the foregoing plea in [5] abatement; knows the contents thereof; that the same are true to the best of his knowledge, information and belief; and that his reason for making this affidavit is that W. A. Burns, attorney in fact for the defendant company, is not in Shanghai.

(Sgd.) R. T. BRYAN, Jr.

Sworn and subscribed to before me this the 22d day of July, 1919.

(Sgd.) JAMES P. CONNOLLY,
Clerk of the Court.

Filed at Shanghai, China, July 22d, 1919. (Sgd.)
James P. Connolly, Clerk. [6]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Amended Plea in Abatement.

Now comes the defendant and respectfully shows to this Honorable Court:

1. That the contract referred to in allegation 2 of the plaintiff's petition and marked Exhibit "A" was entered into by and between the plaintiff herein and the American Trading Co. (Pacific Coast), which said company was duly organized, created, and is existing solely by virtue of the laws of the State of California, United States of America.

2. That the defendant company was organized, created, and is existing solely by virtue of the laws of the State of Maine, and is an entirely separate and distinct company from the American Trading Co. (Pacific Coast).

3. That the defendant company has never entered into the contract set forth in plaintiff's petition, and marked Exhibit "A," either directly or through an agent, with the plaintiff herein.

4. That on the 2d of May, 1919, the plaintiff and the defendant entered into a written agreement to settle their several disputes by arbitration, which said agreement is hereafter specifically set forth as follows: [7]

"May 2, 1919.

"H. E. Roland S. Morris,

American Ambassador, Tokyo.

Sir: In accordance with your kind suggestion, we, the undersigned, agree to the arbitration of our differences by the Honorable Mr. Potter, and undertake

to abide by and put into effect whatever award he makes.

We remain, dear sir,

Yours very respectfully,

AMERICAN TRADING COMPANY,

(Sgd.) D. H. BLAKE,

Vice-president.

AMERICAN TRADING COMPANY,

(Sgd.) A. T. STEELE,

Acting Accountant."

5. That in pursuance of said agreement the plaintiff and the defendant submitted their several disputes to a Mr. Potter, who was the arbitrator specified in said agreement.

6. That the said Mr. Potter, after having heard the plaintiff and the defendant as to their respective contentions, duly submitted and published an award in favor of the defendant herein which said award is hereafter more specifically set forth as follows:

"Mr. A. Tilton Steele has a contract with the American Trading Co. (Pacific Coast), a company which Mr. D. H. Blake states is an associated but with a separate and distinct organization from his American Trading Co., in Tokyo. The American Trading Co. (Pacific Coast), signed by Louis A. Ward, vice-president and manager, makes a three-year contract from July 1, 1918, with Mr. Steele as chief accountant at their [8] Shanghai office including transportation thereto. On his way to Shanghai Mr. Steele was stopped at Yokohama by wireless from Mr. Blake and requested to assume temporarily the duties of a Mr. Boyd of the Tokyo

office while the latter was away on holiday. In the meantime it is developed that Mr. Steele's services were not needed at Shanghai and Mr. Blake states in writing that he began to negotiate with Mr. Steele for a cancellation of his contract and recommends to Mr. Steele that the matter should be referred to Mr. Louis A. Ward, vice-president and manager of the American Trading Co. (Pacific Coast), who had made the contract hereinbefore mentioned. Mr. Blake also writes that he never had any intention to disregard Mr. Steele's rights under this contract. In Mr. Blake's letter dated March 19, 1919, he writes in part as follows: 'We have received word from Mr. Burns, agent of Shanghai office, that as he has made satisfactory arrangements with Mr. Manley (the chief accountant whose position under the contract Mr. Steele was to take) to remain with the company, he, Mr. Burns, did not now wish Mr. Steele to come to Shanghai. We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April, we have no further use for your services here; we cannot say what your recourse will be under your contract, but as intimated the other day, the writer will be glad to render you such assistance as he can in order to effect a mutual satisfactory settlement—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.'

Mr. Blake's next letter is May 6th, in which he demands the return of a number of keys which he claims belongs to the company and notifies Mr.

Steele that he has a debit balance of Y541.21, which he asks payment of at once to Mr. Blake. [9] Mr. Blake in letter to Mr. Steele dated August 27, 1918, employs him temporarily in Tokyo for practically the same salary as his contract, and temporary employment to be for such time that Mr. Boyd is absent on holiday, which Mr. Blake estimates will be about six months. Mr. Blake further adds in this letter this time will of course apply to Mr. Steele's three-year term as mentioned in original contract. Mr. Blake concludes this letter as follows: "It is understood between us that this temporary arrangement does not prejudice any verbal understanding which you (Mr. Steele) may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

Mr. Steele also claims that he had a verbal understanding in San Francisco with Mr. Burns of the Shanghai office, that his passage back to San Francisco, including all legitimate traveling expenses were to be paid by the company and both Mr. Ward and Mr. Burns stated to him (Mr. Steele) that this was the custom of the company in all cases of covenanted servants and that Mr. Steele would of course be treated in the same way.

After reading over carefully the briefs which have been submitted by both Mr. Blake and Mr. Steele I am of the opinion that the matter of the 3-year contract should be referred to Mr. Ward in San Francisco for settlement.

Second. That Mr. Blake should pay Mr. Steele in full until such time as Mr. Steele can secure first-

class passage back to San Francisco, less any indebtedness that may be proved that Mr. Steele owes Mr. Blake.

Hoping that this conclusion may be mutually satisfactory, I am, gentlemen,

Yours very sincerely,

(Signed). [10]

P. S. Mr. Steele's passage to San Francisco to be paid by Mr. Blake's Corp.

To Mr. D. H. Blake,

Vice-president American Trading Co.,

Tokyo, Japan.

7. That the said award is final and conclusive as to the facts alleged in the plaintiff's petition and is a bar to this action.

WHEREFORE the *plaintiff* prays this Honorable Court that the petition of the plaintiff be dismissed and it be allowed to depart hence and recover its costs.

(Sgd.) FLEMING, DAVIES & BRYAN,
Attorneys for Defendant.

W. A. Burns, being first duly sworn, deposes and says: That he is the attorney in fact of the American Trading Co., that he has read the foregoing amended plea in abatement, knows the contents thereof, and that the same are true to the best of his information, knowledge and belief.

Sworn and subscribed to before me this 28th day of November, 1919.

(Sgd.) W. A. BURNS.

(Sgd.) JAMES P. CONNOLLY,
Clerk.

Filed at Shanghai, China, November 28, 1919.
James P. Connolly, Clerk. [11]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

vs.

AMERICAN TRADING COMPANY,

Motion.

Take notice that the defendant proposes to move this Honorable Court as soon as counsel may be heard:

1st. For an order for the taking of depositions of Mr. Potter at Philadelphia, Pa., Louis A. Ward at San Francisco, California, and D. H. Blake at London, England, all of which persons are without the jurisdiction of this Court and material witnesses to support the defendant's amended plea in abatement as appears by affidavit hereunto attached and marked Exhibit "A."

2d. That the hearing of the defendant's amended plea in abatement be postponed until such depositions have been returned to this Court.

(Sgd.) FLEMING, DAVIES & BRYAN,
Attorneys for Defendant.

Filed at Shanghai, China, December 19, 1919.
James P. Connolly, Clerk. [12]

Exhibit "A."
AFFIDAVIT.

W. A. Burns being first duly sworn, deposes and says:

1st. That he is the attorney in fact of the American Trading Co.

2d. That Mr. Potter, Louis A. Ward, and D. H. Blake are material witnesses to prove the facts alleged in defendant's amended plea in abatement.

3d. That he has used proper diligence to obtain the evidence of the persons aforesaid.

4th. That said persons aforesaid are without the jurisdiction of this Court and no one else can testify to the facts within their knowledge.

(Sgd.) W. A. BURNS,
Affiant.

Sworn and subscribed to before me this the 19th day of December, 1919.

(Sgd.) JAMES P. CONNOLLY. [13]

Exhibit "B."

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

vs.

AMERICAN TRADING COMPANY,
AFFIDAVIT.

J. B. Manley, being first duly sworn, deposes and says:

1. That he is the chief accountant of the American Trading Co. at Shanghai China.

2. That he is acquainted with the material facts involved in the case of Steele vs. The American Trading Co.

3. That Mr. Potter, Louis A. Ward, and D. H. Blake are important, material and necessary witnesses to prove the facts alleged in defendant's amended plea in abatement; that the said Mr. Potter, Louis A. Ward, and D. H. Blake are residing in places more than 1,000 miles from the jurisdiction of this Court.

4. That all the facts which the said witnesses will testify to are facts which arose relating to things happening without the jurisdiction of this Court; that the American Trading Co., through its proper officers, has used due and proper diligence to obtain the evidence of the said Mr. Potter, Louis A. Ward, and D. H. Blake.

5. That the contract attached to plaintiff's petition was signed in San Francisco, California, United States of America, without the jurisdiction of this Court; that the alleged breach of said contract occurred in Japan without the jurisdiction of this Court; and that no one in Shanghai connected with the American Trading Co. can testify to the [14] facts surrounding the signing of said contract or the facts leading up to the alleged breach.

6. That your affiant is informed and believes and therefore says that Mr. Potter will testify in substance as follows: "I was the arbitrator in the Matter of Steele vs. the American Trading Co., which

matter was arbitrated in Japan in the American Embassy at Tokyo. The agreement to arbitrate set forth in the defendant's amended plea in abatement was the agreement under which the arbitration was conducted. The award set forth in the plaintiff's amended plea in abatement was the award handed down by me. I understood that this award was to be final and binding upon the parties.

7. That your affiant is informed and believes that Mr. D. H. Blake will testify substantially as follows: "The contract referred to in allegation 2 of plaintiff's petition and marked Exhibit "A," was made by the American Trading Co. (Pacific Coast), which company was organized under the laws of the State of California, and is entirely separate and distinct from the American Trading Co. of which I was the manager at Tokyo. The corporation of which I was the manager was organized under the laws of the State of Maine. The defendant, that is, the company of which I was the manager, never made the contract set forth in plaintiff's petition, either directly or through an agent. The only contract that we had with Mr. Steele was a temporary agreement, and if he was discharged, he was discharged under the temporary agreement. The agreement to arbitrate is composed of a letter dated May 2, 1919, addressed to Roland E. Morris and signed by me and Mr. Steele. The other letters, if any, referring to the arbitration, lead up to this final agreement which includes everything referring to the submission and arbitration. That in pursuance of this agreement to arbitrate, the matter was arbitrated by Mr. Potter,

[15] who handed down his award, a copy of which is set forth in the defendant's plea in abatement. To the best of my information, knowledge and belief, this is a true copy. This award, as I understood it, was final and binding upon the parties. Mr. Steele was discharged under a temporary contract in Tokyo, Japan. All of the things alleged in plaintiff's petition took place in San Francisco or Japan. Mr. Burns of the American Trading Co. has written me relative to the matter."

8. That your affiant is informed and believes and further says that Mr. Louis A. Ward will testify in substance as follows: "That the American Trading Co., Pacific Coast, was organized under the laws of the State of California. The American Trading Co. in Shanghai and Tokyo are branches of American Trading Co. organized under the laws of the State of Maine and is an entirely separate and distinct company from the American Trading Co., Pacific Coast. The Contract alleged in plaintiff's petition and marked Exhibit "A," is signed by the American Trading Co., Pacific Coast, and not by the American Trading Co. of Maine."

Sworn and subscribed to before me this 8th day of Jan. 1920.

(Sgd.) J. B. MANLEY,

(Sgd.) JAMES P. CONNOLLY.

Filed at Shanghai, China, January 8, 1920. (Sgd.)
James P. Connolly, Clerk. [16]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

vs.

AMERICAN TRADING COMPANY.

Amended Motion.

Take notice that the defendant proposes to move this Honorable Court as soon as counsel may be heard:

1. For an order for the taking of depositions on commission of Mr. Potter at Philadelphia, Pennsylvania, Louis A. Ward at San Francisco, California, and D. H. Blake at London, England, all of which persons are without the jurisdiction of this Court and material witnesses to support the defendant's amended plea in abatement as appears by affidavits hereunto attached and marked Exhibit "A" and "B."

2. That the hearing of defendant's amended plea in abatement be postponed until such depositions have been taken on commission and returned to this Court.

(Sgd.) FLEMING, DAVIES & BRYAN,
Attorneys for Defendant.

Filed at Shanghai, China, January 9, 1920. (Sgd.)
James P. Connolly, Clerk. [17]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

Plaintiff,

vs.

AMERICAN TRADING COMPANY,

Defendant.

Order to File Amended Answer.

By consent of plaintiff's counsel in open Court defendant is hereby given leave to file an amended answer on or before January 16, 1920.

By the Court.

(Sgd.) CHARLES S. LOBINGIER.

Judge.

Filed January 9, 1920. James P. Connolly, Clerk
[18]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

vs.

AMERICAN TRADING COMPANY.

Affidavit.

W. A. Burns, being first duly sworn, deposes and says:

1. That he is the attorney in fact of the American Trading Co., at Shanghai, China.

2. That one D. H. Blake is a necessary and material witness for the defendant; that the defendant cannot proceed to trial without the testimony of the said D. H. Blake; that all acts alleged in plaintiff's petition occurred without the jurisdiction of this Court.

3. That your affiant is informed and believes and therefore says that the said D. H. Blake will testify in substance as follows: "I was the manager of the American Trading Co., at Tokyo, and Mr. A. T. Steele was under my direct charge and supervision while he was working at that office. The services rendered to the American Trading Co., by A. T. Steele were inefficient and unsatisfactory; he was insubordinate and disrespectful to his superiors, refusing to obey instructions; he came to the office late in the morning and did not stay after office hours in the evening, although he was repeatedly warned to come on time; he wrote letters to Mr. Ward who had no connection with the American Trading Co., of Tokyo, telling him of the business of the Tokyo office and its affairs, which Mr. Ward had no right to know. Mr. Steele was too small a man for the place and [19] did not in any sense render services satisfactory to the company. His services were not only unsatisfactory, but he was a disturber, causing the

other employees to be discontented and dissatisfied.”

4. That your affiant makes this affidavit as to the testimony of the said D. H. Blake upon information and belief, which said information is based upon correspondence received from the said D. H. Blake, and conversations had with him, the said D. H. Blake.

5. That your affiant has used due diligence to obtain testimony of the said D. H. Blake; that at the time this suit was instituted your affiant had no direct knowledge of the facts alleged in the plaintiff's petition, and had to acquire knowledge thereof by means of correspondence with D. H. Blake; that Mr. Blake has since the institution of this action gone to London, where is the manager of the London office of the American Trading Co., and our affiant had to correspond with him there in order to acquire knowledge of the details of this case; and that on account of these reasons the defendant has been unable to move for an order to take the deposition of D. H. Blake on commission sooner than at the present time.

(Sgd.) W. A. BURNS.

Sworn and subscribed to before me this 13th day of January, 1920.

(Sgd.) JAMES P. CONNOLLY,
Clerk of the Court.

Filed at Shanghai, China, January 13, 1920.
Bernyce H. Smith, Deputy Clerk. [20]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

vs.

AMERICAN TRADING COMPANY.

Motion to Take Deposition.

Take notice that the defendant through its counsel proposes to move this Honorable Court on Tuesday, January 13, 1920, at 3:30 P. M. o'clock, for an order to take the deposition on commission of D. H. Blake in London, England, it appearing by affidavit hereto attached that the said D. H. Blake is a material and necessary witness and that the defendant has used due diligence to obtain the evidence of the said D. H. Blake, and for a further order postponing the trial of this case until said deposition has been returned to this Court.

(Sgd.) FLEMING, DAVIES & BRYAN,
Attorneys for Defendant

Filed at Shanghai, China, January 13, 1920.
James P. Connolly, Clerk. [21]

In the United States Court for China.

Cause No. 798.

Civil No. 272

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Order Setting Date of Trial.

This cause comes on for hearing on defendant's motion to take deposition on commission;

On consideration whereof, plaintiff's counsel having agreed in open Court to waive objections to the letters written by the proposed witness and to the testimony of the affiant in support of said motion as to conversations with said witness regarding the subject matter of said proposed testimony, said waiver being restricted to such objections as relate only to the secondary character of said evidence;

The said motion is accordingly overruled and by consent of both parties this cause is set for trial on Friday, January 23, at 9:30 A. M.

By the Court.

(Sgd.) CHARLES S. LOBINGIER,

Judge.

Filed January 14, 1920.———, Clerk. [22]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

vs.

AMERICAN TRADING CO.

Amended Answer.

The defendant answering the petition of the plaintiff, respectfully shows to this Honorable Court:

As a first defense, the defendant alleges:

1. That allegation 1 is admitted.

2. That allegations 2, 3, 4, 5, and 6 are denied.

As a second defense, the defendant alleges:

3. That the contract referred to in allegation 2 of plaintiff's petition and marked Exhibit "A" was entered into by and between the plaintiff herein and the American Trading Co., Pacific Coast, which said company was duly organized, created and is existing solely by virtue of the laws of the State of California, United States of America.

4. That the defendant company was organized, created and is existing solely by virtue of the laws of the State of Maine, and is an entirely separate and distinct company from the American Trading Co., Pacific Coast.

5. That on the 2d of May, 1919, the plaintiff and the defendant entered into a written agreement to settle their several disputes by arbitration, which

said agreement is hereby specifically set forth as follows:

“May 2, 1919.

H. E. Roland S. Morris,
American Ambassador, Tokyo.

Sir: In accordance with your kind suggestion, we, the undersigned, [23] agree to the arbitration of our differences by the Honorable Mr. Potter, and undertake to abide by and put into effect whatever award he makes.

We remain, Dear Sir,

Your very respectfully,

AMERICAN TRADING COMPANY,

(Signed) D. H. BLAKE,

Vice President.

AMERICAN TRADING COMPANY,

(Signed) A. T. STEELE,

Acting Accountant.

6. That in pursuance of said agreement the plaintiff and the defendant submitted their several disputes to a Mr. Potter, who was the arbitrator specified in said agreement.

7. That the said Mr. Potter, after having heard the plaintiff and the defendant as to their respective contentions, duly submitted and published an award in favor of the defendant herein which said award is hereafter more specifically set forth as follows:

“Mr. A. Tilton Steele has a contract with the American Trading Co., (Pacific Coast) a company which Mr. D. H. Blake states is an associated but with a separate and distinct organiza-

tion from his American Trading Co., in Tokyo. The American Trading Co., (Pacific Coast) signed by Lewis A. Ward, Vice President and manager makes a three year contract from July 1st, 1918, with Mr. Steele as chief accountant at their Shanghai office including transportation thereto. On his way to Shanghai Mr. Steele was stopped at Yokohama by wireless from Mr. Blake and requested to assume temporarily the duties of a Mr. Boyd of the Tokyo office while the latter was away on a holiday. In the meantime it is developed that Mr. Steele's services were not needed at Shanghai and Mr. Blake states in writing that he began to negotiate with Mr. Steele for a cancellation of his contract and recommends to Mr. Steele that the matter should be referred to Mr. Louis A Ward, vice-president and manager of the American Trading Co., (Pacific Coast) who had made the contract hereinbefore mentioned. Mr. Blake also writes that he never had any intention to disregard Mr. Steele's rights under this contract. In Mr. Blake's letter dated March 19, 1919, he writes in part as follows: 'We have received word from Mr. Burns, agent of Shanghai office that he has made satisfactory arrangements with Mr. Manley (chief accountant) whose position under the contract Mr. Steele was to take) to remain with the company, he, Mr. Burns, did not wish Mr. Steele to come to Shanghai. We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end

of April we have no further use for your services [24] here, we cannot say what your recourse will be under your contract, but as intimated the other day the writer will be glad to render you such assistance as he can in order to effect a mutual satisfactory settlement—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.’

Mr. Blake’s next letter is May 6th, in which he demands the return of a number of keys which he claims belongs to the company and notifies Mr. Steele that he has a debit balance of Tls. 541.21 which he asks payment of at once to Mr. Blake. Mr. Blake in letter to Mr. Steele dated August 27th, 1918, employs him temporarily in Tokyo for practically the same salary as his contract, said temporary employment to be for such time that Mr. Boyd is absent on holiday which Mr. Blake estimates will be about six months. Mr. Blake further adds in this letter this time will of course apply to Mr. Steele’s three year term as mentioned in original contract. Mr. Blake concludes this letter as follows: “It is understood between us that this temporary arrangement does not prejudice any verbal understanding which you (Mr. Steele) may have had with Mr. Ward or Mr. Burns prior to your departure from San Francisco.

Mr. Steele also claims that he had a verbal understanding in San Francisco with Mr. Burns of the Shanghai office, that his passage back to

San Francisco including all legitimate travelling expenses were to be paid by the company and that both Mr. Ward and Mr. Burns stated to him (Mr. Steele) that this was the custom of the company in all cases of covenanted servants and that Mr. Steele would of course be treated in the same way.

After reading over carefully that briefs which have been submitted by both Mr. Blake and Mr. Steele I am of the opinion that the matter of the 3 year contract should be referred to Mr. Ward in San Francisco for settlement.

Second. That Mr. Blake should pay Mr. Steele in full until such time as Mr. Steele can secure first class passage back to San Francisco less any indebtedness that may be proved that Mr. Steele owes Mr. Blake.

Hoping that this conclusion may be mutually satisfactory, I am, Gentlemen,

Yours very sincerely,

(Signed)

P. S. Mr. Steele's passage to San Francisco to be paid by Mr. Blake's Corp.

To Mr. D. H. Blake,

Vice President American Trading Co.,

Tokyo, Japan."

8. That the said award which the defendant offered to carry out is final and conclusive as to the facts alleged in the plaintiff's petition and is a bar to this action. As a third defense, the defendant alleges: [25]

9. That the contract alleged in the plaintiff's petition, a copy of which is attached thereto and marked Exhibit "A," is a contract for personal services not to be performed within a year from the making thereof, and is not signed by the defendant nor by his duly authorized agent, and as such is within the statute of frauds which said statute the defendant herein specifically pleads as a bar to this action.

10. That the alleged services rendered by the plaintiff herein to the defendant were neither satisfactory nor efficient, as required in the contract alleged in plaintiff's petition, a copy of which is attached thereto and marked Exhibit "A," and that the said plaintiff in the performance of his alleged duties was inefficient, negligent and insubordinate to his superiors.

WHEREFORE the plaintiff prays this Honorable Court that the petition of the plaintiff be dismissed and it be allowed to depart hence and recover its costs.

(Sgd.) AMERICAN TRADING CO.,
W. A. BURNS, Agent,
Defendant.

FLEMING, DAVIES & BRYAN,
Attorneys for Defendant.

W. A. Burns being first duly sworn, deposes and says:

That he is the attorney in fact of the American Trading Co., that he has read the foregoing amended answer, knows the contents thereof, and that the same are true to the best of his information, knowledge and belief.

Sworn and subscribed to before me this 13th day of Jan. 1920.

(Sgd.) W. A. BURNS.

(Sgd.) JAMES P. CONNOLLY.

Filed at Shanghai, China, January 16, 1920.
James P. Connolly, Clerk. [26]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE

vs.

AMERICAN TRADING COMPANY.

Replication.

The plaintiff, in reply to the new matter set forth in the answer of the defendant herein, alleges as follows:—

1. Plaintiff admits that an agreement in the form set forth in paragraph 5 of defendant's answer was entered into by plaintiff and defendant but plaintiff alleges that said agreement does not set forth the subject matter to be submitted to the arbitrator nor the terms and conditions of the arbitration.

2. Plaintiff denies that the award set forth in paragraph 7 of defendant's answer is final and conclusive and a bar to this action and alleges that said award is void and of no effect and not binding upon plaintiff.

3. In reply to paragraph 9 of defendant's answer, plaintiff denies that said contract is not signed by a duly authorized agent of the defendant company and further denies that said contract is within the statute of frauds or is a bar to this action.

(Sgd.) A. TILTON STEELE.

On this — day of January, 1920, before me personally came A. T. Steele, who being by me duly sworn, did depose and say that he is the plaintiff herein; that he has read the foregoing replication and knows the contents thereof and that the matters therein are true to the best of his knowledge, information and belief.

(Sgd.) JAMES P. CONNOLLY,
Clerk United States Court for China.

Filed at Shanghai, Jan. 21, 1920. James P. Connolly, Clerk. [27]

A. T. STEELE

vs.

AMERICAN TRADING COMPANY.

PLAINTIFF'S EXHIBITS. [28]

Plaintiff's Exhibit "A."

San Francisco, Cal.

May 27, 1918.

Mr. A. Tilton Steele,
Present.

Dear Sir:—Confirming the writer's conversations with you during the past few days, we have employed you as follows:

Position: Chief Accountant of our Shanghai

office, the duties of which office you are to take up as quickly as possible, proceeding herefrom for Shanghai within about thirty days.

Duration of Employment: Three years from July 1st next or earlier if the time of your departure from San Francisco for Shanghai hereunder be earlier. Should you not leave San Francisco for Shanghai hereunder prior to July 1st, next, your salary will commence on July 1st.

Compensation: Two Hundred and Fifty (\$250.00) Dollars U. S. Gold per month for the first year and for the second and third year adjustments of salary to be made at the end of the first and second year, as may be mutually agreed; your compensation, however, not to be less than Ten Thousand (\$10,000.00) Dollars for the entire period of three (3) years.

Satisfactory Service: The undertakings herein contained on our part are all conditioned upon your doing your work in an efficient and satisfactory way.

Transportation to Shanghai: In addition to salary as herein provided, we will provide you with first-class transportation to Shanghai.

Bond: It is a condition of your employment that you give any bond the Company may require, the Company paying [29] the premium thereon.
Exhibit A.

Yours truly,

AMERICAN TRADING COMPANY.

(Pacific Coast.)

(Sgd.) LOUIS A. WARD,
Vice-President and Manager.

Confirmed and accepted.

(Sgd.) A. TILTON STEELE.

LAW—V. [30]

Plaintiff's Exhibit "B."

Kashimamaru. 1 Ra

Received: 3:45 a m.

Steele.

Passenger

Kashimamaru.

Tokyoyubin

via Choshimusen.

No. 97. Words 29.

Date: 19/8, 1918. Time: 11:10 a. m.

This is probability your being required Tokyo office for few months before going Shanghai please be prepared to leave ship in Yokohama. Blake.

AMERICAN TRADING. [31]

Exhibit B.

Plaintiff's Exhibit "C."

Tokyo, Aug. 27, 1918.

A. Tilton Steele, Esq.,

Present:

Dear Sir:—We beg to confirm our conversation of yesterday's date with reference to your temporary employment in this office.

Compensation: The compensation provided for in your original contract made with Mr. L. A. Ward, Vice-President and Manager of the American Trading Company of the Pacific Coast on May 27th calls for a salary of \$250.00 Gold per month,

or a salary of not less than \$10,000.00 Gold for the three years' period of your contract. We have arranged that you are to receive \$250.00 Gold at exchange 50, which is the equivalent of Yen 500.00 per month together with an additional allowance of Yen 150.00 per month to cover any additional expenses which you may be put to owing to the change in your plans. The two items above mentioned will make a total of Yen 650.00 per month which you will receive while you are in the employ of our Tokyo office.

Term of Employment: As explained to you, we wish you to remain in Tokyo during the time that Mr. Boyd is absent on holiday which we estimate will be about six months. This time will, of course, apply on your three years' term as mentioned in your original contract.

Travelling Expenses: Any legitimate travelling expenses incurred by you on behalf of the company will be refunded to you.

General: It is understood between us that this [32] temporary arrangement does not prejudice any verbal understanding which you may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

We remain, Dear Sir,

Yours very truly,

AMERICAN TRADING COMPANY.

(Sgd.) D. H. BLAKE,

Vice-President.

Plaintiff's Exhibit "D."

Tokyo, March 19, 1919.

A. Tilton Steele, Esq.,

American Trading Co., Tokyo.

Dear Sir:—With reference to our conversation of a few days ago, we beg to confirm what we told you at that time, to the effect that we had received word from Mr. Burns, Agent of our Shanghai Office, that as he had made satisfactory arrangements with Mr. Manley to remain with the Company, he did not want you to come to Shanghai.

We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April, we shall have no further use for your services here.

We cannot say what your recourse will be under your contract, but, as intimated the other day, the writer will be glad to render you such assistance as he can in order to effect a mutually satisfactory settlement,—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.

We remain,

Yours very truly,

AMERICAN TRADING COMPANY,

(Sgd.) D. H. BLAKE,

Vice-President.

DHB/CP

EXHIBIT M 1 [34]

Plaintiff's Exhibit "E."

250.00@ Tls.454.55

55)250(5.10

72

55

360

360

39.60

\$632.00

72)455(\$632.00

432

230

216

140

144

[34A]**Plaintiff's Exhibit "F."**

May 2d, 1919.

Mr. D. H. Blake,

Vice-President and General Manager,

American Trading Co.,

Present:

Dear Sir:—With further reference to the matter of giving up my office and handing over charge of my department to Mr. Boyd, which you wish me

to do immediately notwithstanding the fact that I am entitled to a month's written notice to that effect, under the Japanese law which you threaten to invoke, to compel me to do so, I am perfectly willing to hand over the keys of the safe, to Mr. Boyd, after I have duly accounted for the notes, securities, etc., which are in that safe, if it be distinctly understood between us in writing that in my doing so my rights and interests under my original agreement with the company made with Mr. Ward, and ratified by Mr. Burns, and later confirmed by you in your letter of appointment dated August 27, 1918, are not in any way prejudiced thereby.

It must also be distinctly understood between us in writing in accordance with the terms of my understanding with our Ambassador, the Hon. Mr. Roland Morris, reached in my conversation with him at the Embassy yesterday, that we are both to agree and to state such an agreement in writing to him, assenting to the arbitration of the Hon. Mr. Potter, whose award must be considered as binding to both parties in the matter [35] of the Exhibit O4.

main issue involved in the case, viz.: the amount of compensation to be paid to me at the Tokyo office of the Company in full settlement of all my claims against the Company under the two agreements I have with the Company.

Kindly confirm this understanding and oblige,
(Sgd.) A. T. STEELE. [36]

Plaintiff's Exhibit "G."

Tokyo, May 2, 1919.

A. T. Steele, Esq.,
Tokyo.

Dear Sir:—I am in receipt of your letter of even date, and in reply thereto would state that in giving up your duties and handing over charge of the Accountant Department to Mr. Boyd, as requested by me, both verbally and in writing, your rights and interests under your original agreement with the Company, or my letter of August 27th, 1918, will not be prejudiced in any way.

With reference to the Arbitration of our differences, I confirm my previously expressed willingness to acquiesce in the suggestion made by H. E. Ambassador Morris, that the Arbitration should be placed in the hands of the Honorable Mr. Potter, who is at present in Tokyo, and that his award should be binding on both parties, and shall be settled in Tokyo.

I remain,

Yours very truly,

AMERICAN TRADING COMPANY,

D. H. BLAKE,

Vice-President.

DHB/CP

EXHIBIT O 2 [37]

Plaintiff's Exhibit "I."

Arbitration of case A. Tilton Steele vs. D. H. Blake, Vice-president, American Trading Co., Tokyo, Japan.

Mr. A. Tilton Steele has a contract with the American Trading Co., (Pacific Coast) a company which Mr. D. H. Blake states is an associated but with a separate and distinct organization from his American Trading Co., in Tokyo. The American Trading Co., (Pacific Coast) signed by Lewis A. Ward, Vice-president and Manager, makes a three-year contract from July 1st, 1918, with Mr. Steele as chief accountant at their Shanghai office including transportation thereto. On his way to Shanghai Mr. Steele was stopped at Yokohama by wireless from Mr. Blake and requested to assume temporarily the duties of a Mr. Boyd of the Tokyo office while the latter was away on holiday. In the meantime it is developed that Mr. Steele's services were not needed at Shanghai and Mr. Blake states in writing that he began to negotiate with Mr. Steele for a cancellation of his contract and recommends to Mr. Steele that the matter should be referred to Mr. Lewis A. Ward, vice-president and manager of the American Trading Co., (Pacific Coast) who had made the contract hereinbefore mentioned. Mr. Blake also writes that he never had any intention to disregard Mr. Steele's rights under this contract. In Mr. Blake's letter dated March 19th, 1919, he writes in part as follows: "We have received word from Mr. Burns,

agent of Shanghai office, that as he has made satisfactory arrangements with Mr. Manley (the chief accountant whose position under the contract Mr. Steele was to take) to remain with the Company, he Mr. Burns did not now wish Mr. Steele to come to Shanghai. We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April we have no further use for your services [38] here, we cannot say what your recourse will be under your contract, but as intimated the other day the writer will be glad to render you such assistance as he can in order to effect a mutual satisfactory settlement—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.”

Mr. Blake's next letter is May 6th, in which he demands the return of a number of keys which he claims belong to the company, and notifies Mr. Steele that he has a debit balance of Y541.21 which he asks payment of at once to Mr. Blake. Mr. Blake's letter to Mr. Steele, dated August 27th, 1918, employs him temporarily in Tokyo for practically the same salary as his contract, said temporary employment to be for such time as Mr. Boyd is absent on holiday, which Mr. Blake estimates will be about six months. Mr. Blake further adds in this letter this time will of course apply to Mr. Steele's three-year term as mentioned in original contract. Mr. Blake concludes this letter as follows: “It is understood between us that this temporary arrangement does not prejudice any

verbal understanding which you (Mr. Steele) may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

Mr. Steele also claims that he had a verbal understanding in San Francisco with Mr. Burns of the Shanghai office, that his passage back to San Francisco including all legitimate traveling expenses were to be paid by the Company and that both Mr. Ward and Mr. Burns stated to him (Mr. Steele) that this was the custom of the company in all cases of covenanted servants and that Mr. Steele would of course be treated in the same way.

After reading over carefully the briefs which have been submitted by both Mr. Blake and Mr. Steele I am of the opinion [38A] that the matter of the three-year contract should be referred to Mr. Ward in San Francisco for settlement.

Second. That Mr. Blake should pay Mr. Steele in full until such time as Mr. Steele can secure first-class passage back to San Francisco less any indebtedness that may be proved that Mr. Steele owes Mr. Blake.

Hoping that this conclusion may be mutually satisfactory, I am, gentlemen,

Yours very sincerely,

(Signed) WILLIAM POTTER.

P. S. Mr. Steele's passage to San Francisco to be paid by Mr. Blake's Corp.

To Mr. D. H. Blake,

Vice-president American Trading Co.,

Tokyo, Japan. [39]

Plaintiff's Exhibit "J."

5/6/1915.

Mr. A. Tilton Steele,
etc. etc. etc.

Dear Mr. Steele, Yours without date at hand, I will be glad to hear the briefs whenever ready. This I have expressed to both you and Mr. Blake.

After the briefs are received and studied, will notify both you and Mr. Steele date of conference.

Yours very sincerely,
(Sgd.) WILLIAM POTTER. [40]

Plaintiff's Exhibit "H."

ARTHUR TILTON STEELE versus AMERICAN
TRADING CO.

SECTION I.

Chronological Statement of the facts of the case.

(Period: San Francisco to Yokohama.)

(May, 1918, to August, 1918.)

Para. 1. On or about May 1st, 1918, I had a conversation in San Francisco with Mr. Louis A. Ward, Vice-president and General Manager of the American Trading Company (Pacific Coast) on the subject of "Trade Opportunities in British India." I had had several talks with him on the same subject on previous occasions. At the particular conference above referred to (which took place at the American Trading Company's Offices at No. 244 California Street, San Francisco, I made a specific proposal to Mr. Ward to go to the Orient in the interests of his Company.

Para. 2. Mr. Ward replied that he was going to New York shortly on Company's business; that he would bear my proposition in mind; that he would take it up in the Head Office with the Executives concerned, and that upon his return to San Francisco, he would advise me of the decision of the Company.

Para. 3. On or about May 20th, 1918, Mr. Ward, who had just returned from New York, telephoned to me at my office, Suite No. 1011-12 Mutual Savings Bank Building, and asked me to call and see him as he had something of interest to communicate to me. I then made an appointment to meet him at his office on the following day.

Para. 4. I kept my appointment; and Mr. Ward intimated to me that while my India proposition was of interest to his Company, [41] nothing definite would be done in the matter until after the war. He added that he had authority from the Head Office to offer me the position of Chief Accountant in the Shanghai Office of the Company, for prompt acceptance, as Mr. Manley, the then Chief Accountant, was about to leave the employment of the Company and an experienced accountant was needed to take his place without delay.

Para. 5. On or about May 25th, 1918, after due consideration of the above offer, I called again at Mr. Ward's office by appointment; and the result of that visit was that I accepted the position offered and, at Mr. Ward's request, signed a formal application for same, giving the fullest particulars of my experience and business connections. I left

this application with Mr. Ward who was to draw up an agreement in the form of a letter or memorandum to be signed by both of us after my record had been fully examined and verified. I may mention here that Mr. Ward has known me personally since 1909; and that he is also acquainted with a number of prominent business men for whom I have worked as auditor in San Francisco.

Para. 6. On May 27th, 1918, I again called by appointment at the Company's office; and on this occasion an agreement between the American Trading Company and myself, was signed by Mr. Ward as Vice-president of the American Trading Company, and by myself. The original of this agreement was handed to me and is hereunto attached and marked Exhibit "A."

Para. 7. At that time I was Managing Proprietor of The American Accounting Company of San Francisco, a firm of public accountants and auditors which I organized and equipped in San Francisco in January, 1909.

Para. 8. I at once commenced closing up my accounting business, transferring same to various accountants associated with me, and [42] generally winding up my business affairs so as to be ready to leave San Francisco on or before July 1st, 1918, to proceed to Shanghai to take up my position of Chief Accountant at the Shanghai office of the American Company, in accordance with the terms of the before mentioned agreement between that Company and myself.

Para. 9. After I had completed my arrange-

ments as above stated, I reported to Mr. Ward and handed him an application for bond of \$10,000 in terms of said agreement, duly filled in as directed by the Bonding Company. This application was signed by me in the presence of Mr. Ward. The name and Address of the Bonding Company was "The Ocean Accident and Guarantee Corporation," 55 John Street, New York City.

Para. 10. Owing to the war, it was very difficult at that time to procure a passage on a steamer to China, and to obtain a passport from the Department of State at Washington. I managed to procure both a passport and a steamer ticket on or about 1st August, 1918; and I was then instructed by Mr. Ward to leave San Francisco by rail, not later than August 6th, 1918, so as to be aboard the S. S. "Kashima Maru" sailing on August 9th, from Seattle, Washington, to Shanghai. Both railroad ticket to Seattle and steamer ticket to Shanghai were provided by the Company in accordance with my agreement; and I left San Francisco in accordance with instructions of the Company and of arrangements made for me.

Para. 11. During the latter part of July, 1918, Mr. Burns of the Shanghai Office of the American Trading Company, arrived in San Francisco. Mr. Ward introduced me to Mr. Burns, at 244 California Street; when Mr. Burns confirmed my appointment and stated that he was glad an American was going out to replace Mr. Manley, a Britisher, and that he would write to Mr. [43] Roper, Act-

ing-agent of the Company in Shanghai, giving full particulars regarding me.

Para. 12. I had in all, three interviews with Mr. Burns at the San Francisco office of the Company. Mr. Ward was present at one of these interviews. The three points which follow in addition to the terms of my written agreement were confirmed by Mr. Burns:

Point 1. Regarding the rate of exchange. I enquired of Mr. Burns if the Company allowed the foreign staff in Shanghai to draw their salaries at the customary rate, viz.: 1 U. S. gold dollar to 2 Mexican dollars. Mr. Burns replied that the Company paid its foreign staff at an even better rate than the one suggested by me, namely, .55 to the tael and .72 taels to 1 Mexican dollar. He figured out just how many Mexican dollars \$250. would amount to at the Company's special rate, and the result was found to be Mex. \$632.00. I have the penciled figures in the handwriting of Mr. Burns which I can produce as evidence.

Point II. The salary of U. S. \$10,000 for the three year period of my agreement was to be my minimum salary; it was clearly understood between us that the sum did not include bonuses given by the Company, nor any extra allowances.

Point III. My passage back to San Francisco, including all legitimate traveling expenses, was agreed to be paid by the Company. Both Mr. Ward and Mr. Burns stated that this was the custom of the Company in all cases of covenanted servants and that I should of course be treated in the

same way as all others in my position.

The above three points comprise "the verbal understanding" referred to in Mr. Blake's letter to me dated August 27th, 1918, which governs the terms of my employment in Tokyo and is hereunto attached and marked Exhibit "C."

Para. 13. After the above stated matters had been settled, Mr. Burns [44] handed me his portfolio of Shanghai office forms to look over. I took this home with me and the following morning I returned them to Mr. Burns who told me that he had written to the Acting Agent in Shanghai, Mr. Roper, requesting him to assist me in my efforts to serve the Company.

Para. 14. I desire here to state that the proceeds of various transfers of my accounting business before mentioned, aggregated U. S. \$4,400 including business for 1919 but not including furniture or equipment. I received this sum in a cash payment of U. S. \$2,000 down and by monthly instalments of U. S. \$200. The last of such monthly instalments was paid to the credit of my banking account on January 9th, 1919, and I can produce the duplicate deposit slip if required to do so.

Para. 15. I left San Francisco by train on August 6th, 1919, and arrived in Seattle on the morning of August 9th. On the same day I embarked on the S. S. "Kashima Maru" and sailed on that vessel from Seattle, on August 9th, 1918.

Para. 16. On or about August 19, 1918, and whilst aboard the said steamer en route for Shanghai, I received a wireless from Mr. Blake,

Vice-President and General Manager of the American Trading Company for China and Japan, advising me of the probability of my being required in the Tokyo office of the Company for a few months before proceeding to Shanghai. The original wireless message so received by me is hereunto attached and marked Exhibit "B."

(End of Section I.) [45]

SECTION II.

TOKYO OFFICE PERIOD.

(August, 1918—May, 1919.)

Para. 1. In consequence of the instructions mentioned in para. 16 of Section I of this brief, I called at the Tokyo office of the American Trading Company on August 23d, 1918, the date of my arrival at Yokohama, and saw Mr. Blake in his office. On the 24th of August, I again saw Mr. Blake at his private residence; and on the 26th, I had a further interview with this gentleman at his office. As a result of the above three interviews, was the agreement dated the 27th August, 1918, made between the American Trading Co., by its Vice-president and General Manager, Mr. Blake, and myself, covering the period of my temporary employment in the Tokyo Office. This agreement confirmed my original agreement made in San Francisco, as to salary, term of employment, etc., and the concluding paragraph (headed "General") reads as follows:

"It is understood between us that this temporary arrangement does not prejudice any verbal understanding which you may have had with Mr. Ward

or Mr. Burns prior to your departure from San Francisco.”

Original agreement which is in the form of a letter from the American Trading Company represented by Mr. Blake, to myself, is hereunto attached and marked Exhibit “C.”

Para. 2. On August 28th, 1918, I started work in the Tokyo office of my employers in the capacity of Acting Accountant, and I held that office during the absence on leave of Mr. C. A. S. Boyd, the permanent Accountant, who returned to Tokyo on or about April 30th, 1919. [46]

Para. 3. I worked continuously from August 28th, 1918, to May 1st, 1919, when I commenced handing over the management of the Accountant's Department to Mr. Boyd who resumed entire charge thereof on and from May 3d, 1919, and received from me all the notes, bonds, securities and valuables of the Company in the safes of the Tokyo office, complete and in order and all the keys and contents of furniture in said office (save only two keys in para. 20 hereof hereinafter referred to). I was released from all liability in connection with the above as from May 3d, 1919. The original receipts signed by Mr. Boyd and numbered 1, 2, & 3, are hereunto attached and marked respectively Exhibit “D-1,” Exhibit “D-2” and Exhibit “D-3.”

Para. 4. During the period of my employment—over eight months—I attended office on each and every business day, working continuously from 9 A. M. to 6 P. M., daily (save for slightly shorter hours during a few days of illness), not going out

to lunch, averaging eight hours a day, although the regular office hours were from 9 A. M. to 12:15 P. M., and from 1:30 P. M. to 5 P. M. I never lost a single day during this whole period, I even attended during illness and contrary to the advice of my doctor, in order to facilitate the business of the Company.

Para. 5. I claim that I discharged the duties of my position in an efficient and satisfactory manner. The last Report of the Auditors of the Company, which bears date the 19th day of April, 1919, (of which a copy is hereunto annexed and marked Exhibit "E"), and the files of correspondence which are hereunto annexed and marked respectively Exhibit "F," Exhibit "G" and Exhibit "H" will disclose that in the fulfillment of such duties I showed persistent loyalty to the interests of the Company as I saw them, in the face of discouragement [47] from other and senior officials of the Company.

Para. 6. I should like to observe that when I took over the charge of the Accounting Department of the Tokyo Office of the American Trading Company. I was fresh from the practice of my profession of Public Accountant in San Francisco where scientific accounting and office management have been developed to a high degree of excellence, and I was perfectly astounded to discover in the office of a first-class American Company, accounting methods which were considered obsolete by the profession in America and England, 20 years ago. The reports of the Company's Auditors will support what I say.

Para. 7. I believe that these same Auditors (Messrs. Harold Bell & Taylor, Chartered Accountants) will also testify if necessary to my persistent efforts to straighten out certain sections of the books and accounts of the Company, and to my plan to introduce certain much needed improvements in the system of accounts and collections, which, however, like Messrs. Bell & Taylor's own recommendations made as far back as 1916, failed to be effective because of the attitude of the management of the Company. A perusal of the Auditor's report (Exhibit "E") and the correspondence contained in the files marked Exhibit "F," Exhibit "G" and Exhibit "H," will convey to the Arbitrator a general idea of the conditions which I considered it my duty to attempt to correct, and the attitude of the management in connection with my proposals.

Exhibit "F" contains correspondence with Mr. Blake, Vice-president.

Exhibit "G" contains correspondence with Mr. Mauger, Agent, and

Exhibit "H" contains correspondence with Mr. L. R. Ward.

Para. 8. As it is possible that Mr. G. N. Mauger may be called as a witness in this case, I may mention that our business views have conflicted particularly in the matters of

- (1) Building Department Stock Account.
- (2) Building Department Account Sales. [48]
- (3) Mr. R. F. Moss, Building Department Manager's Commissions Account.

Exhibit "G" contains the correspondence dealing with items numbers 1 and 2.

Regarding item number 3 (Mr. Moss's Commission Account for the latter half of 1918) I felt it my duty to decline and did in fact decline to sign the statement which confirmed a credit of some yen 21,000 to Mr. Moss's account, because I did not think that he was actually entitled to the full amount of such credit. I also and for the same reason declined to endorse the estimated profit shown on the Account Sale of the Building Department Stock Account, viz.: yen 124,000 which yielded a commission of yen 9,300 to Mr. Moss. It would not have been proper for me to have endorsed same because the said Account Sale was not verified or taken from the main books. The former statement for yen 21,000 was signed over my head by Mr. Mauger; and the latter was adjusted without any reference to myself, between Mr. Mauger and Mr. Moss, sometime during February, 1919.

Exhibit "G" gives particulars and if others are wanted, I shall be prepared to supply them.

Para. 9. While my relations with Mr. Mauger were mutually satisfactory, so far as I am aware, my official position in relation to him as the Agent of the Company, and the necessity of signing documents, checks and the like jointly with him in the name of the Company, became difficult to sustain without bringing *bringing* upon myself criticisms which doubtless seemed proper to Mr. Mauger, but were to my mind entirely unmerited. Mr. Mauger was a responsible officer of the Company invested

with the power of approving and vetoing. I think that he sometimes overlooked the fact that I too had my responsibilities; and unlike myself Mr. Mauger had, in my opinion, a certain responsibility of friendship to Mr. R. F. Moss and [49] other heads of departments, which I have sometimes felt has led him to give way to discussion and decide against my views which were dictated only by loyalty to the interests of the Company as I saw them, and were not colored even in the faintest degree, by private or personal considerations.

Para. 10. On or about January 25th, 1919, I received a communication from the Head Office of The Ocean Accident & Guarantee Co., Limited (which has previously been mentioned in this brief of the Bonding Company) asking me to fill in a special form used in the cases of applicants who have been in business on their own account prior to employment by the American Trading Company.

Correspondence with this Bonding Company and Post Office Registration Receipt are hereunto attached and marked Exhibit "J."

Para. 11. Some time about the middle of February, 1919, I was advised by Mr. Blake, that the American Trading Company had decided to transfer their Bonding business to The Royal Indemnity Company of New York, and that all officers of the Company who were under bond or required to furnish bonds, should address new applications to this Company. A form of application was handed to me by Mr. Mauger. I filled in this form in accordance with instructions, and signed same in the pres-

ence of Mr. Mauger who added his name as a witness to my signature. I then handed my signed application to Mr. Mauger for forwarding to the Bonding Company.

Para. 12. On February 17th, 1919, I wrote a letter (of which a copy is hereunto attached and marked Exhibit "K"), and sent same to Mr. Burns, Agent of the Company in Shanghai. I have never received any reply to this letter. I wrote again on March 12th, 1919, to Mr. Burns. This second letter did not elicit [50] any reply and was returned to me about two weeks after its date, by Mr. Blake in Tokyo. (Original letter of March 12th, 1919, is hereunto attached and marked Exhibit "K-2.")

Para. 13. On the same March 12th (the date of writing my second letter to Mr. Burns), I mailed to my fiancée, Mrs. Margaret Cosgrave, a letter of credit on the San Francisco office of the American Trading Company, for \$250.00 to cover the cost of her passage to Shanghai. This lady had decided to come out to be married to me as soon as she had secured a 1st class berth on a suitable steamer to Shanghai. I advised Mr. Ward of the facts and enclosed a copy of the letter of credit with my communication to Mr. Ward.

A copy of the said letter of credit is hereunto annexed and marked Exhibit "L."

Para. 14. On March 17th, 1919, Mr. Blake summoned me to his private sanctum and informed me for the first time, that "as Mr. Burns of Shanghai Office, had made satisfactory arrangements with Mr. Manley to remain with the Company, he did not

want me to go to Shanghai," and also that he (Mr. Blake) would have no further use for my services, when Mr. Boyd returned to his position. The conversation was confirmed by a letter dated March 19th, 1919, which is hereto attached and marked Exhibit "M-1."

I replied that I would write to Mr. Ward on the subject and that pending his reply I did not feel able to come to any definite decision. A copy of my letter to Mr. Blake confirming this conversation and in reply to his letter of the same date, is hereunto attached and marked Exhibit "M-2." I believe that Mr. Blake also wrote to Mr. Ward on the matter as he handed me a copy of a letter which he stated he had sent to Mr. Ward. Said copy so handed to me is hereunto attached and marked Exhibit "M-3." [51]

Para. 15. During the afternoon of April 29th, 1919, Mr. Blake came to my room in the American Trading Company's office and inquired whether I could not be ready to hand over charge of my department to Mr. Boyd who would arrive in the office the following morning (April 30th, 1919). I replied that I had received no official notice of Mr. Boyd's return to Tokyo, and that it would not be possible for me to have things ready for handing over until May 1st, 1919.

Para. 16. The following morning (April 30th) I wrote Mr. Blake a letter concerning pending questions which I thought should properly be settled before I was called upon to hand over charge of my department. To this letter Mr. Blake replied at

once, absolving me of any responsibility, but refusing my recommendation, which had been approved by the Company's Auditors, for an investigation of the accounts of the Building Department, and shelving my suggestion for reorganization suggested in my letter to Mr. Blake of 12th April, 1919.

The above-mentioned letters of the 30th April, 1919, are hereto attached and numbered respectively Exhibit "N-1" and Exhibit "N-2."

Para. 17. Until the 30th April, I never had any friction with Mr. Blake, but upon that day Mr. Blake was guilty of the use of insulting and violent language to me in his office; he finally dismissed me from his presence, with the remarks that "he did not care where I went or what happened to me after I left the Tokyo office; that he was *though* with me; I could go back to San Francisco and get whatever redress I could out of Mr. Ward who made the agreement; that he (Mr. Blake) had had nothing to do with the making of the agreement and that he would have nothing more to do with it; that all he wanted was for me to get out of the office—the [52] sooner the better—after having handed over everything to Mr. Boyd."

Para. 18. On the following morning (May 1st) I addressed another letter to Mr. Blake, suggesting an arbitration of the matter, and a special understanding in writing between us to that effect. After a great deal of unnecessary invective and abuse, threats of criminal prosecution for wrongfully withholding the property of the Company and legal steps under Japanese law, Mr. Blake con-

sented to refer our contractual differences to arbitration. Mr. Mauger was present during the whole of this interview. On May 2d, 1919, Mr. Blake in his official capacity, and myself signed a reference to you and mutually undertook to abide by and carry out your Award when made. (Original letters of Mr. Blake dated 1st and 2d of May are hereunto attached and marked respectively Exhibit "O-1" and Exhibit "O-2" and copies of my replies of May 1st and 2d are hereunto attached and marked respectively Exhibit "O-3" and Exhibit "O-4." Copy of the Submission to Arbitration is hereunto attached and marked Exhibit "O-5."

Para. 19. On the morning of May 3d, upon my arrival at the office for the purpose of making over the notes, Bonds and other valuable securities contained in the safe of the Company under my charge, to Mr. Boyd, I discovered that my desk had been opened in my absence. I demurred to this action and at once wrote Mr. Blake upon the subject. In the absence of Mr. Blake, Mr. Mauger opened my letter and whilst I was working with Mr. Boyd, threw his reply upon my desk.

Copy of my letter to Mr. Blake (dated May 3d) and of Mr. Mauger's reply attached hereto and marked respectively Exhibit "P-1" and "P-2."

Para. 20. On March 8th, 1919, I received a letter from Mr. Blake asking me to send to him "certified copies" of such of my letters [53] to Mr. Ward as in any way related to the business of the Company; and Mr. Blake also enclosed a statement of my current account with the Company for set-

tlement. The same letter also refers to a number of office keys which Mr. Blake stated I must return to Mr. Boyd at once. I had two keys belonging to the American Trading Company, and two such keys only, in my possession. The reason I had them at the date in question was that in conformity with arrangements with Mr. Boyd, I went to my office on Sunday, May 4th, to remove certain of my personal effects from the desk which I had been using during the term of my employment, but found the office door locked from inside. I was thus unable to remove my effects as arranged, and was delayed in returning the keys. On the 8th instant, I called at the office, saw Mr. Boyd, removed my effects, turned over the two keys which I had to Mr. Boyd, and received from him a clear receipt covering all keys and contents of furniture in the office, complete and in order. (Said receipt is hereunto attached and marked Exhibit "D-3"— see para. 3 of this Section of the Brief.) Press copies or originals of all correspondence passing between said Mr. Ward and myself during the material period, are collected together in the bundle hereunto attached and marked Exhibit "H."

I have included the debit balance of yen 545.21 in my Particulars of Claim under the heading of "Deductions." Original letter of Mr. Blake's with statement of my current account as received by me as above, and my reply to same (press copy) are hereunto attached and marked respectively Exhibit "Q-1," and Exhibit "Q-3."

(End of Section 2.) [54]

SECTION III.

Statement of Claims.

In view of the facts hereinbefore stated, I contend that the American Trading Company have broken the contract concluded between that Company and myself at San Francisco on 27th May, 1918; and I have the honor to claim damages as follows:

| | | |
|---|--------|------------|
| Item 1. To Minimum salary payable to me under agreement of 27th May, 1918. | | |
| U. S. Gold \$..... | | 10,000 |
| Item 2. By salary received by me under agreement dated 27th August, 1918, 9 months at \$250.00 per month..... | 2,250 | |
| Item 3. July/18 salary paid in San Francisco..... | 250 | 2,500 |
| Item 4. Balance of salary outstanding computed at outstanding U. S. Gold \$ computed at Company's Shanghai Office rate 55 \$ to Tls. 100..... | | |
| Item 5. Tls. 72 to \$ Mex. Mexican \$ converted into Japanese money at the current rate of Exchange.. | 18,938 | |
| Item 6. Yen 1,765 to 1 Mexican \$ Yen..... | | Y33,427.35 |

Item 7. BONUS ADDITIONS.

Bonuses claimed by me for the two years 1919/20 and 1920/21 calculated on same basis of participation in profits of Company as actually paid to Mr. C. A. S. Boyd, Accountant & Mr. W. Gauge, Sub-Agent, as
 Amt. Forward..

Y 33,427.35

[55]

their participation in the profits of 1918 viz.: yen 19,000 each. (Vide analysis of salaries, bonuses —& commissions paid to officers & heads of departments in 1918 which is attached hereto and marked "Exhibit R.".....

20.000,00

Item 8. Travelling expenses.

1st Class passage to San Francisco plus legitimate expenses of voyage. U. S. \$325.00 at say .50 yen.....650.00

1st class passage to Shanghai arranged for Mrs. M. M.

Cosgrave my fiancée as per

Item 9. Letter of Credit on San Francisco office of American Trading Co., for U. S. \$250 at say .50 yen.. 500.00

| | | |
|---|--------|-----------|
| Item 10. 1st class passage re- turn to San Francisco of Mrs. M. M. Cosgrave (\$250) and approximate hotel expenses for one month in Shanghai (yen 300) yen..... | 800.00 | 1,950.00 |
| <hr/> | | |
| Total of Claims.....Yen | | 55,377.35 |
| <hr/> | | |

DEDUCTIONS

| | | |
|--|--------|-----------|
| Item 11. By balance at debit of Current Account of self as on May 1st, 1919, as per statement rendered (Ex- hibit Q-2).....yen | 545.21 | 545.21 |
| <hr/> | | |
| Forward..... | | 54,832.14 |
| | | [56] |
| Amt. Forward..... Y | | 54,832.14 |

| | | |
|--|---------|-----------|
| Item 12. By Amount of Letter of Credit \$250 if paid by San Francisco office of American Trading Co., (see tem 9)..... | Yen 500 | 500.00 |
| <hr/> | | |
| NET AMOUNT OF CLAIM..Yen | | 54,332.14 |
| <hr/> | | |

(P. T. O.)

Comparative Statement of Salaries, Bonuses & Commissions paid by the American Trading Company in Tokyo to Officers and Heads of Departments and principal Japanese Assistants.

| Officers. | Salary Amount. | Ratio. | Annual Bonus. | Personal Commission. | Total. |
|----------------------------|-------------------|--------|------------------|-------------------------|-----------|
| G. N. Mauger, Agent, Y | 11,500 | 4.25 | 2,000 | 46,928.62 | 60,428.70 |
| W. Gauge, Sub-agent, | 7,200 | 1.39 | 10,000 | | 17,200.00 |
| C. A. S. Boyd, Accountant, | 7,800 | 1.28 | 10,000 | | 17,800.00 |
| Department Heads. | | | | | |
| P. Messer, Chief | | | | | |
| Engineer, | 10,800 | 7.83 | | 84,634.58 | 95,434.58 |
| R. F. Moss, Building | | | | | |
| Department, | 3,000 | 13.61 | | 40,833.36 | 43,833.36 |
| Japanese Staff. | | | | | |
| P. T. Yendo, Metal Dept., | 3,600 | 6.55 | | 23,566.45 | 27,166.45 |
| S. Nakada, Import. “ | 2,400 | 3.14 | | 7,537.45 | 9,937.43 |
| T. Ichii, “ “ | 2,400 | 2.66 | | 6,381.49 | 8,781.49 |
| T. Fujita, “ “ | 1,440 | 2.46 | | 3,541.63 | 4,981.63 |

N. B. The Bonus paid to Messrs. Boyd and Gauge respectively, based on the profits of the Company during 1918, is the lowest in proportion to salary, of any of the above including the Japanese assistants, such proportion being 1.28 and 1.39 in the respective cases. [58]

May 3, '19.

Securities in Safe.

- Envelope No. 1. Sekiguchi Shoten, Sundry Papers
(also in safe 2 packets of
shares)
- Envelope No. 2. S. Sugiyama—Mortgage deed.
- Envelope No. 3. T. Takeuchi 12 pcs. (120) Okachi
Slate Co.'s Shares.
- Envelope No. 4. Sugawara 20 Bonds Y20,000.00
- Envelope No. 5. Returned O. K.
- Envelope No. 6. Kumazawa Shoten (Contract &
Y1000.00 Bonds).
- Envelope No. 7. Y. Shinohara (Agreement).
- Envelope No. 8. Nanyo Boyeki Ka. (Y1300
Bonds).
- Envelope No. 9. Shimizu-gumi 3 Fire Insur.
policies.
- Envelope No. 10. Returned.
- Envelope No. 11. T. Takeuchi Sold and Credited
to Customer's a/c.
- Envelope No. 12. K. Yebihara various documents
& old papers.
- Envelope No. 13. D. Larrieu Rifles papers.
- Envelope No. 14. Okino Shoten Y13,000. Bonds.
- Envelope No. 15. Documents re. Yokohama Prop-
erty.
- Envelope No. 16. Naka Majiro 1 document.
- Envelope No. 17. Paul Messer (2 certs. A. T. Co.'s
shares) & 5500 U. S. Bonds
\$2500).
- Envelope No. 18. Returned.

- Envelope No. 19. Hanai & Co. (Y250.00 Japanese Gov't Bonds).
- Envelope No. 20. Kanagawa Denki Ka. Returned ok.
- Envelope No. 21. U. Yoshida Y200.00 Bonds (Balance returned).
- Envelope No. 22. Tanaka Shin Y2500. Bonds.
- Envelope No. 23. Returned.
- Envelope No. 24. Returned.
- Envelope No. 25. T. Wootton one cover sealed.
- Exhibit D1 [59]
- Envelope No. 26. Tokyo Kogyo Sha. (\$15,000.00 Bonds).
- Envelope No. 27. Returned.
- Envelope No. 28. Y. C. & A. C. (200 Debs Y1000.00).
- Envelope No. 29. International Trading Co., 500 shares.
- Envelope No. 30. Chiksan Mining Co., 1320 share O. K.
- Envelope No. 31. Nichibei Guaranty Trust Co., 900 shares O. K. Also 2 packets, shares Sekiguchi Shoten in safe 1 book cont'g \$600.00 of travelers' checks John Roberts in safe.
- Envelope No. 32. Kanagawa Denki 40 shares certificates.
- Envelope No. 33. Yamazaki Shoten 5. I. J. Gov't Bonds Y5000 fv.
- Envelope No. 34. D. H. Blake Bonds O. K. as per separate sheet.

- Envelope No. 35. S. Hirao I. J. G. Bonds Y5000
f. v.
- Envelope No. 36. Yazo Waki Shoten (2) two war-
rants.
- Envelope No. 37. T. Takizawa Shoten (2) war-
rants & one A. T. Co.'s godown
receipt.
- Envelope No. 38. Kyokuto Empitsu Go. k. (20
certs. shares.
- Envelope No. 35. Liberty Bonds C. A. S. B. \$200.00
A. A. Doney \$100.00.
- Envelope No. 40. Kojima 1 warrant. M. Itagaki
1 warrant (with Mr. Gauge for
renewal) and confirmed by
him.

Received The above complete and in order and
safe all in order.

(Sgd.) R. BOYD.

Exhibit D1.

[60]

May 3d, '19.

Mr. D. H. Blake's Bonds and Receipts.

| | | |
|---|--------|------|
| Bonds on hand.....Y | 6500. | £200 |
| Receipts for (Chosen Job)..... | 10000. | |
| “ “ (Mitsubishi)..... | 3500. | |
| “ “ (International Bank). . | 1500. | |
| “ held by (Eng. Dept. re T: M: Bureau) | 3500. | |

Y25,000. £200

Received the Above complete and In Order.

Also borrowed from

For A. T. Co.

H. & S. B. C. & with Intl. Bank.....Y3,000.

M. B. Bk. & with M. B. G. Ka..... 4,000.

Y7,000.

As Per Receipts.

(Sgd.) BOYD.

Exhibit D2.

[61]

MEMORANDUM.

May 8, 1919.

American Trading Company

Tokyo

Received from Mr. Steele, the keys of the office and contents of furniture in the accountant's office complete and in order.

AMERICAN TRADING COMPANY.

(Sgd.) BOYD,

Accountant

Exhibit D3.

[62]

Harold Bell & Taylor,
Chartered Accountants.

48 Yamashita—Cho,
Yokohama.

19th April, 1919.

American Trading Co.,

Tokyo.

Dear Sir:—We have completed a detailed examination of your books in our audit for the half year ending the 31st of December, 1918. As before, we

have examined the whole of the Bank in cash vouchers and all the postings from the numerous subsidiary cash books, day books and journals to the general ledger, with the exception of some journal postings of small amount. We enclose, in triplicate, a profit and loss account for the six months and a balance sheet at 31st December certified by us. These have been prepared by us independently of those already sent by you to New York. And after investigation, we have adopted the same provisions and reserves for unsettled items as those estimated by yourself, leaving the estimated profits unaltered. We have however, stated the amounts under somewhat different analysis, to show more clearly the position.

Profit and Loss Account. In this we have altered the salesroom profits, shown by you as Y27,129.12 to Y23,305.66, separating the profits added on your invoicing goods to the sales rooms: Y3,823.46, and showing these as a profit of your import Department. You will further notice that we have placed the Y40,000.00 written off the Yokohama property under the head of depreciation, so as to show a total of such items, instead of charging it separately as beyond the line of ordinary expenses.

Exhibit E.

[63]

Departmental Commissions have not borne either this depreciation item of Y40,000.00 nor the special provision of Y160,000.00 reserved against possible losses resulting from purchase of goods at high war prices, as these are considered special items. In

connection with this subject, we would suggest that a definite system of clearly kept accounts should be installed as part of your bookkeeping to ascertain and exhibit the profits, upon which departmental commissions are paid. In addition to the sums charged in the profit and loss account aggregating Y44,791.45, as you are aware, members of your Tokyo staff have participated in profits of Tokyo, Kobe and New York offices as follows:

| | |
|-------------------------------|-----------|
| Engineering Department, Kobe, | |
| Mr. P. Messer | 10,220.12 |
| Building Department, Kobe, | |
| Mr. P. Messer | 8,469.59 |
| Building Department, All, | |
| Offices, Mr. R. F. Moss | 21,481.69 |
| <hr/> | |
| 40,171.40 | |

Those commissions are charged in the first two instances to Kobe office and as regards the third item, being charged to the account sales it is proportionately borne by Tokio, Kobe and New York, so that we are not actually concerned therewith in our audit of our Tokio books. We refer to these figures, however, to lay stress upon the need for careful record and calculations as suggested above. Another view of these commissions that appears to us to call for some adjustment is the question of charging the commissions on departmental profits to Tokio, although the same are calculated on New York share of gross profits as well. To illustrate from the case of [64] the building department, we get the anomaly of the company earning, in Tokio,

Y3,705.32 while the manager of the engineering department receives as 6% on the profits Y2,920.57. This, of course, is caused by inclusion of such "profits" of the New York share of *gross* profits Y42,050.28, but none of this 6% is charged to New York, and the result is that out of Y6,625.89 net profits, Tokio pays Y2,920.57 purporting to be 6% on said "net profits." The question whether these commissions should be based thus, partly on gross profits and partly on net profits, is not one with which we called upon to deal, and we imagine this basis was fixed with the idea that the result of these transactions actually shows a certain profit, and it is of no interest to the departmental manager whether Tokio office retain all such profits or hand half thereof over to their head office. On the face of it this argument appears sound but should not the question be followed further and is it not a fact that if the arrangement, whereby the New York office receive half the profit on account sales, or gross profit, were not in existence, the cost of the goods to the Tokio office would of necessity be increased to cover New York overhead and profit, and as a result the profit on the transaction in Japan, and consequently the departmental managers commission, correspondingly reduced? In further reference to this question we find that the usual commission payable to Mr. R. F. Moss on the profit on building department "stock account" has not been included in the accounts for the half year under review, for the reason that the amount so due had, we understand, not yet been ascertained. We have

seen a statement showing a profit on this account of Y124,033.24 upon which commission $7\frac{1}{2}\%$ would be Y9,302.49, but we believe [65] it is felt that these figures which have been, we are informed, corrected several times, are still not sufficiently reliable to form the basis for a commission payment. It must be borne in mind therefore that, in so far as a liability exists in respect to this commission, the accounts for the half year ended 31st December, 1918 are incomplete.

Building department.—With reference to the “Stock Account” of this department, alluded to in the last paragraph, we consider the method of treating Kahn materials as one invoice or venture, in your invoice ledger an almost insuperable obstacle to correct and accurate accounting. We understand that, as a result of your acting accountant’s recommendations, a subdivision of this account has already taken place but even so we fear this “Stock Account” will remain very involved. At the present time the debit balance on this invoice ledger account is less by over Y150,000 than the actual cost value of the Kahn materials on hand, as the profits, resulting from the transfers to contracts at a price actually above cost, have never been taken into the main books.

One result of this, besides creating a “Secret Reserve,” is that it is practically an impossibility to reconcile the physical inventory with the invoice ledger which creates a very obvious danger point. We consider that every effort should be made to ascertain the actual results from the beginning of

this invoice ledger account up to a certain date, on which a very careful physical inventory should be taken, and the account closed on the basis of such inventory by transferring the profits and/or losses up to that date. As far as possible separate invoice ledger accounts should thereafter be kept for each shipment. This may involve more detailed work, [66] but even so, we consider the labor would be justified, as current and accurate results could then be obtained as regards the working of an important department, which are quite impossible under the present cumbrous system.

Bookkeeping. This brings us naturally once again, to the question of the desirability and, we believe, urgent need for improvement in your detailed bookkeeping, which we understand Mr. Mauger and your accountant Mr. Boyd had under consideration. In Mr. Boyd's absence, your acting accountant, Mr. Steele has gone further into these matters, and is, we believe, making suggestions to you thereupon. This being so, we do not propose to specially report upon the necessary improvements and alterations in parts of your bookkeeping system to meet the requirements of your increase in business, beyond referring once more to our report upon this subject, dated 26th June, 1916, and especially to paragraph under the heading of Ventures, on page 4 and 6 thereof.

Inventory. As mentioned in our report of 2nd April 1, 1917, the asset appearing in your balance sheet as "Stocks" represents merely that balance of your invoice ledger, rather than the value of an

actual physical inventory and though we are informed that the latter is duly reconciled with such balances, except in the case of the building department as already mentioned, we should like to see some system instituted whereby a more ready comparison would be possible. We believe that if our recommendations with regard to making a radical change in the method of recording charges on imports, were given effect to, it would become a much simpler matter to agree the invoice ledger balances with the inventory, as well as saving a very considerable [67] amount of bookkeeping.

Balance Sheet. We have separated in this the various items of Suspense Account under the correct heading so as to show the distinct liabilities and assets. In the sheet prepared by you Yen 3,383,110.97 was shown as a liability and Yen 45,625.46 as an asset (making a net balance of the amount as shown in the books, Yen 3,337,485.51). We have dealt with this item as follows:

Credits added to Sundry Creditors:

| | |
|---|--------------|
| Taxes | \$236,391.20 |
| Claims | 18,501.32 |
| Differences in Bank Account between passbooks and ledgers..... | 27.60 |
| Liabilities disclosed and paid since 31st December | 18,196.66 |
| | <hr/> |
| | 303,316.78 |

Credits deducted from sundry debtors.

Reserve against Horii Tatsujiro's debt... 2,000.00

Credits added to balance due to other
offices of the Company.

| | |
|---|-----------|
| Exchange adjustment on New York financing account..... | 47,134.13 |
|---|-----------|

| | |
|--|-----------|
| Exchange adjustment on New York current account | 50,736.33 |
|--|-----------|

Credit stated separately (subject to
deduction shown in debits below).

| | |
|---|--------------|
| Balances of invoice book, profits on unsettled items | 2,979,923.73 |
|---|--------------|

| | |
|--|---------------|
| Total suspense credits per your bal- ance sheet | Y3,383,110.97 |
|--|---------------|

[68]

Debit Balances added to
Sundry Debtors.

| | |
|--|--------|
| Kobe Debit Note, Freight on steel awaiting reply from New York | 196.12 |
|--|--------|

| | | |
|---|----------|----------|
| Debtors disclosed by cash re- ceived since 31st Dec. 1918. | 7,610.12 | 7,806.24 |
|---|----------|----------|

Debit Balance added to Stock
Inventory:

| | |
|--|----------|
| Fire Insurance premium to be charged Kahn materials.. | 3,834.16 |
| Rents for godown ditto | 1,682.00 |

Debit balances deducted from
separate item for reserved
profits on unclosed trans-

actions (see credits above
of Y2,979,923.73).

Interest to be charged.....27,000.00

| | | |
|----------------------------|----------|-----------|
| Storage to be charged..... | 5,303.06 | 32,303.06 |
|----------------------------|----------|-----------|

| | | |
|--|--|-----------|
| Total Suspense Debits per your Balance Sheet..... | | 45,625.46 |
|--|--|-----------|

An item of Yen 7,241.76 placed by you amongst sundry debtors being temporary overpayments, due to remitting round amounts, we have deducted from the balance due to London Office to which these payments relate.

We have verified by examination of Bank Pass Books or Bank Certificates the balances of the sixteen various bank accounts at 31st December with the exception of the item of Yen 37.60 referred to on the previous page. We have examined the balances in the personal ledger of sundry debtors, which agree with the list and with the total in the balance sheet. As to the value of these we would draw attention to the following:

Personal Ledger, Folio 100, T. Shinohara 1,080.66 old and stagnant. *Folio 310, Tokyo Kashi Kikaisha* 119.18, represents an old account of 2,581.03 less paid in January and March, 1918, 2,461.85, leaving 119.18 of which 52.27 [69] has been reversed in January, 1919. *Folio 138 Tokyo Tansan Gas Company*, 6,787.00 no change since May, 1918.

We have seen the script of the shares in the International Trading Company. As regards Bills Re-

ceivable, Y953,078.10 on the balance sheet, the following shows the position:

| | |
|---|--------------|
| Asano Cement Company promissory notes..... | 653,994.90 |
| Of these we have actually seen 24 notes falling due in 1920 or 1912 totalling. | 468,083.76 |
| And have traced as discounted with the Bank or collected in cash received 9 notes falling due in 1919 totalling | 185,911.14 |
| | <hr/> |
| | -Y653,994.90 |
| | <hr/> |
| | <hr/> |

| | |
|---|-------------|
| Tohoku Itagami Kaisha, two bills due 30th Aug., 1919, which we have seen in hand..... | 96,265.48 |
| Other bills, 35 in number, which have been collected or discounted, and for which we have traced the cash in 1919..... | 202,817.72 |
| | <hr/> |
| | Y953,078.10 |
| | <hr/> |
| | <hr/> |

We have had every assistance from Mr. Mauger, Mr. Steele and your staff, and have been supplied with all the information we have required. We are, dear, sirs,

Yours faithfully,
(Sgd.) HAROLD, BELL & TAYLOR,
Chartered Accountants. [70]

Plaintiff's Exhibit "F."

March 10th, 1919.

Accountants.

D. H. Blake, Esq.,

Account Sales.

Vice-pres. & General Mgr.

Dear Sir: I have passed the accompanying account sales and the statements and credit notes based upon them, which are attached thereto, despite the fact that the accounts of invoices they cover have not been similarly completed and closed in our invoice ledger, the foundation of our account sales.

I took the liberty of calling your attention to this situation last Saturday and your reply that "the O. K. of the department head is sufficient" limits my responsibility in this connection by shifting the burden on to the shoulders of each department head.

This is entirely satisfactory to me, if it is to you, and I have signed these various statements to H. O. accordingly.

Faithfully yours,

ATS/AS

(Sgd.) A. T. S. [71]

Exhibit F.

STATISTICAL ABSTRACT OF CUSTOMERS OUTSTANDING ACCOUNTS Feb'y. 28/19.

| Summary. | Current. | 30 d/s. old. | 60 d/s. old. | 90 d/s. old. | 4 m/s. old. | Prior. | Total. |
|--------------|----------------|--------------|--------------|--------------|-------------|--------------|--------------|
| Import Dept. | 398,547.99 | 94,627.52 | 97,894.26 | 64,249.44 | 7,940.98 | 38,765.04 | 702,025.23 |
| Eng. | 596,873.35 | 1,529,349.70 | 148,994.70 | 263,505.31 | 156,335.39 | 1,563,628.62 | 4,258,687.07 |
| Building | 8,248.57 | 28,516.17 | 48,878.82 | 24,486.98 | 24,132.30 | 95,351.79 | 303,853.63 |
| Traffic | 3,002.11 | 16,573.76 | 3,705.33 | 3,119.13 | 1,654.84 | 18,258.33 | 46,313.50 |
| Total | Y 1,080,911.02 | 1,669,067.15 | 299,473.11 | 355,360.86 | 190,063.51 | 1,716,003.78 | 5,310,879.43 |

STATISTICAL ABSTRACT OF CUSTOMERS OUTSTANDING ACCOUNTS March 31/19.

| Summary. | 30 d/s. old. | 60 d/s. old. | 90 d/s. old. | 4 m/s. old. | Prior. | Total. |
|--------------|--------------|--------------|--------------|-------------|--------------|--------------|
| Import Dept. | 203,792.66 | 60,789.69 | 55,770.18 | 21,065.07 | 35,955.00 | 377,372.60 |
| Eng. | 404,394.07 | 1,602,346.49 | 142,714.58 | 70,319.10 | 1,621,409.67 | 3,841,183.91 |
| Building | 87,874.82 | 25,457.30 | 18,179.09 | 10,181.15 | 222,406.09 | 364,098.45 |
| Traffic | 2,820.57 | 16,496.36 | 4,055.63 | 2,768.83 | 19,226.65 | 45,368.04 |
| Total | Y 698,882.12 | 1,705,089.84 | 220,719.48 | 104,334.15 | 1,898,997.41 | 4,628,023.00 |

AMERICAN TRADING CO.

(Sgd.) A. T. S.,

Acting Accountant. [72]

April 12, 1919.

Mr. D. H. Blake,

Vice-president and General Manager,

American Trading Company, Tokyo.

Dear Mr. Blake: I am sending you herewith a statistical abstract of our customers' overdue accounts (all departments) as of March 31st, 1919,—particulars of same having been sent to the respective department heads for their attention.

You will observe that the aggregate amount outstanding reaches a total of Y4,628,023, not counting our deliveries during the month of March, which amounted to Y1,848,602. A complete analysis of these outstanding accounts has not been prepared as yet, but assuming, for purposes of this letter, that one-third of this huge total, namely Y1,542,674, is composed of accounts in suspense or in process of adjustment, there still remains the tremendous total of over Y3,000,000 overdue. Of this large total, Y1,898,997.41 is over four months old, Y104,334.15 four months old; Y220,719.00 three months old; and the balance practically two months old.

As you are aware, the collections of the Engineering Department have been very slow during the past four or five months, and that will largely account for the big percentage of overdue accounts against the Engineering Department, namely Y3,841,183.91—equivalent to 83% of the grand total. [73]

This large percentage of deferred payments on Engineering Department indents can be readily explained, when you consider the nature of the goods

handled by that department, namely, machinery, tools, implements and mechanical appliances of all kinds. The shortage of a part or parts of machines or the non-arrival of some essential portion of an order may hold up settlement of an account indefinitely. This is one reason why our Engineering Department collections are in arrears. Another reason is lack of special organization for collection work.

When you place along-side of this huge total of collectible accounts outstanding, namely, Y4,628,023, the total amount of our loans outstanding, including over-drafts, namely, Y1,550,000., money we have borrowed locally at high rates of interest in order to retire drafts, and for special finance purposes—also the total amount of drafts maturing in March and April that we had to renew for lack of funds, namely Gold Dollars \$257,437.00 (goods arrived) not to mention customers' promissory notes that we were obliged to discount at rates averaging 7% to meet our current liabilities, nor the amount of our borrowed capital for which we are paying New York office 6% interest, these comparative figures compel attention.

In this connection, may I not suggest the advisability of separating the financial end of the business from the selling end. Our department heads are practically sales managers in this office. [74]

The supervision of orders, the task of business getting, the selling of goods and keeping posted on market fluctuations in the various lines that the Company is interested in seem to me to be their most

important functions—far more so than accounting and collections—and to saddle these heads of departments with bookkeeping and statistical work, when their time and attention is so fully occupied with the executive end of their respective departments, would tend, and does tend, so far as I have observed, to the performance of their duties in this connection in a mechanical manner, such work being entrusted to native clerks, whose O. K. goes.

I would suggest, therefore, to free the executives for their more important tasks in connection with the productive end of the business, and to relieve them of the purely accounting end. Credits, Collections, Accounts and Statistics usually go together in a modern business establishment, and this has proved to be, not only a most economical arrangement, but a most efficient one, making, as it does, for accuracy and concentration—and I am sure our department heads will agree with me when I say this.

This re-arrangement, if carried out by you, would necessitate the organization of a new department, which may be called the “Financial Department,” and I would suggest that our Mr. Boyd be appointed manager of that department, with the Cashier, Credit Man, Collectors, Customers’ Ledger Keeper and other clerks under him, to take charge of the finances of the Company and be responsible for the proper handling of the same. [75]

In co-ordination with the Financial Department and the other departments there would be a department of Audits, Accounts and Statistics, whose work would be to take charge of the invoice ledgers,

account sales and general ledger, Journal and Stock books, check up and verify all matters of accounts, after they have passed through the Financial Department, to prepare the monthly statements for the head office, and to furnish to each department head statistical information relating to the business of his department, to enable the heads of those departments to intelligently follow the growth and development of their business.

Of course, a number of new forms would have to be introduced to give effect to these changes, to the end of simplifying the work and properly coordinating each section of the present Account Department so as to produce the results aimed at—and Mr. Mauger, who has had a considerable amount of experience in accounting in the head office, Mr. Boyd, who is familiar with local conditions and details of the work to be done, and myself, who has had years of experience as a Public Accountant, Auditor, Systematizer in California, can collaborate and work these forms out one by one and have them gradually installed, until the whole system has been carried into effect.

In conclusion, permit me to say that you would be rendering the Tokyo organization a distinct service if you would see this re-organization plan through before you leave here. We have a very fine body of men, capable, alert and wide awake, at the head [76] of each department, and all they need is freedom to develop their own respective lines, without being distracted by responsibilities that do not really belong to them—and I hope that my sugges-

tions will be received in the spirit in which I have offered them, that is to better serve and safeguard the interests of the Company.

Awaiting your decision in the matter, with the keenest interest,

I remain,

Respectfully,

AMERICAN TRADING CO.,

A. T. S.,

Acting accountant. [77]

THE OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED.

October 28, 1918.

The American Accounting Co.,

704 Market St.,

San Francisco, Calif.

Mr. Arthur Tilton Steele, aged 46, of San Francisco, Calif., has requested this Corporation to guarantee his honesty while employed as Chief Accountant by American Trading Co., at Shanghai, China, and as it appears from his application that he was employed by or under you as Manager at San Francisco, Cal., from Jan., 1909, to July, 1918, will you kindly furnish us with answers to the following questions?

Thanking you in advance for your prompt attention, we are,

Yours very truly,

THE OCEAN ACCIDENT AND GUARANTEE CORPORATION, LIMITED.

(Regular form of questions, but with no answers filled in, follows.) [78]

April 10, 1919.

Accountant

Mr. G. N. Mauger,

New Instructions Issued to Traffic Dept.

Dear Mauger: I understand that these new instructions issued to the Traffic Department relating to the Building Department charges are in force from to-day.

As you know, the old O-2230 account was treated as a huge perpetual invoice—all sorts of charges for labor, materials and supplies being dumped in without classification or order of any kind, and it was impossible to check up the same with the Inventory taken of Kahn materials by the Traffic Department on December 31st, 1918.

You have known of this state of affairs having existed long before I came here. The remedy was pointed out by me more than once, namely proper sectionalization of the stock and invoice accounts, and carrying out the same principle in every section of the Accounts Department. On about February 8th you and Moss got together without consulting me at all, and adjusted this old O-2230 account, apparently, to your mutual satisfaction, and certain journal vouchers were passed in by you over my head, and I was asked to see them through.

I caused a new stock ledger to be opened embodying these new KO/ accounts—so that the Building Department stock accounts may be kept distinct and separate from other invoices, and I thought the move, though belated, was a good one. Since then, however, from time to time the Traffic Department has found it difficult to decide just what items of

expense (for supplies or labor) should go to the KO/ accounts (stock) and what should be charged to jobs. Exhibit G. [79]

I tried to make it clear to Hall in my letter to him dated the 12th of March, a copy of which I read to both you and Moss. It would appear that the point of divergence between Moss and myself in regard to these Traffic Department charges is in connection with the direct charges to jobs (for labor, shearing, cutting, etc., as well as supplies). The rest I agree to, because it is an earnest attempt to apply a remedy long left necessary by me.

I contend with all deference to your opinion that if you assent to my proposition that all items of "supplies purchased directly for orders and freight, cartage and any other similar charges directly applicable to individual orders" should be charged to such orders, then, logically speaking, you must include "labor" in the same category,—labor for shearing, cutting, etc., to meet specifications, of individual orders, is a direct charge upon the job. Any system expert will tell you that, and I might mention here that I have installed systems in over twenty different lines of business in San Francisco, including some factories, and I know what I am talking about.

Of course, Moss' claim that his transfer prices include a certain margin to cover handling charges, etc., may be taken for what it is worth. To me it is just an assumption for as yet it has not been substantiated in the books, and unless and until

a thorough investigation of the Kahn Materials account for 1917 and 1918 is undertaken that claim of Moss' will remain, so far as I am concerned, a statement not based on any proved facts or figures.

The same may be said of the Proforma statement of accrued estimated profit on Kahn Material stock during 1918—first stated to be over Y450,000, then reduced by price [80] manipulations to Y118,000. Later raised to Y124,000, and now still further reduced by the latest journal voucher to Y110,582. How many more journal vouchers like this will emerge out of this old O-2230 account to still further consume this so-called profit is more than I can tell.

Regarding these new instructions, you will please understand that I shall pass all cash orders and journal vouchers relating to the old O-2230 account as well as the new KO. accounts with the understanding that I do so upon your responsibility and not mine.

Yours very truly,
AMERICAN TRADING CO.

A. T. S.
Acting Accountant.

ATS/CP. [81]

April 24, 1919.

Mr. L. A. Ward,
Vice-President and General Manager,
American Trading Co. (Pacific Coast).
San Francisco.

My dear Mr. Ward: I am just informed that Mr. Boyd will be here on Monday next; and I shall have

to hand over charge of the Accountants Dept. to him on the first of May.

I expect the Auditor's report any time now and judging from what Mr. Bell has told me, I believe that his firm will not certify to the correctness of the accounts as of Dec. 31, 1918, except in a modified form, unless and until a thorough investigation of the accounts of the Building Dept. has enabled him to verify certain stock balances carried forward to 1919.

Such an investigation would entail a great deal of time, labor and expense, and I have my doubts as to whether Mr. Blake would deem it advisable to incur the expense, particularly at this time, when he is busy organizing a new company to take care of the "Truscon Building Material" interests as a separate concern.

I can fully realize the inexpediency of going into the accounts of our Building Dept. at this time, as any trouble which may arise out of the investigation might perhaps prejudice the interests of the Company in this new enterprise. Be that as it may, Exhibit H [82]

I am sure that were the actual facts in their entirety relating to the accounts of the Building Dept. known to the head office they would agree with me that an investigation was very necessary in this connection.

Mr. Blake remarked to me when I called his attention to the facts that the Kahn Materials stock had never been verified and that Account Sales were made up and passed into our books upon the O. K.

of Mr. Moss that Mr. Moss practically fixed the profit on each job, and thereby his commission as well, the Accountant having no authority to question or to supervise his figures that "such a situation would be positively alarming" were it not for the utmost confidence he had in Mr. Moss' integrity and knowledge of the business."

I have not completed my special report to Mr. Blake on the subject of the existing conditions in the Accountant's Dept., and I feel from the way he has treated my suggestions in regard to collections, that it would be labor lost were I to continue my efforts in that direction—and I am the more moved to this conclusion after a conversation which I had recently with Mauger. This being so, I shall probably go to Shanghai, and shall await your advice there instead of here—unless, of course, after Mr. Boyd's arrival here I see a disposition on the part of Mr. Blake to carry out my suggestions to the end of utilizing my services in the Tokyo office for at least the period covered by my contract with the Company. [83]

That the Tokyo Accountants Dept. needs to be re-organized upon a modern basis is admitted by Mauger—he says in this connection that he and Boyd have been *talking about it* ever since he came here from the Philippines in 1917—but from the time I have been here both Mr. Blake's and his attitude has been to defer any action to the end of improving conditions in the Accountants Dept. until Mr. Boyd got back—and now that Mr. Boyd will soon be here, I expect that Mr. Blake will tell me

that these improvements can be effected by Mauger and Boyd, without having another high-salaried accountant to collaborate with them.

Upon this point I shall have something to say, and it is possible that what I will say may not be entirely acceptable to Mr. Blake or to Messrs. Mauger and Boyd,—but I want to assure you that whatever I might say or do in this connection will be prompted by only one thought, actuated by only one motive—that is to better serve and safeguard the interests of the Company than they have been in the past over here.

Each department head here appears to have a separate organization as if those departments were distinct enterprises or concerns, subsidiary to the parent organization in New York but operating independently, as it were, of each other; The Accountants Dept. of the Company being used merely to record their transactions, to receive and disburse moneys, borrow funds to carry on the business, to retire their drafts, to investigate the financial standing of their customers, and to hold in their behalf [84] the securities deposited by those customers, without, however, any right, title or authority to look into the affairs of their respective departments.

This arrangement often causes confusion between the Accountants Dept. and the other departments. For example, the other day a check for about Y9000, came in by registered mail, and was handed over to me in the usual course to our credit man, who went with it to the department where it belonged to get the requisite Dept. memos, for purposes of record

and receipting, and the check was duly deposited on that day. Two weeks later the head of that department comes in to me and says that in response to a request for settlement from the same customer he was informed that payment had already been made, and he did not know anything about it.

This sort of thing happens very frequently, due to the fact that there is not a proper co-ordination of functions between the Sales Managers' Departments and the Accountant; and too much duplication of records, too much unnecessary clerical work done by the departments concerned, when the Accountants Dept., if properly organized, could handle everything in the Accounting line to the entire satisfaction of all departments concerned.

I am merely touching upon the general conditions existing; to go into details with you would be a voluminous task, and furthermore would necessitate your being here to see things in operation—and if you were here, you, or any keen up-to-date American business [85] man, familiar with American methods, would be forced to come to the same conclusion as I have.

Hoping to hear from you in answer to my letters of last month, before I leave here, which will be by the first boat I can secure passage on to Shanghai,

I remain,
Very sincerely yours,

ATS/CP. [86]

April 17, 1919.

Mr. L. A. Ward,

Vice-President and General Manager,
American Trading Co. (Pacific Coast),
San Francisco.

My dear Mr. Ward: Since addressing you last there have been no new developments to advise you of.

The conference with Messrs. Bell & Taylor took place some days ago, and they are apparently still considering matters, for their report and statements are not forthcoming as yet. As soon as they come to hand and Mr. Blake is made aware of the actual conditions existing I shall make my special report to him and await his decision.

Perhaps the enclosed clipping may be of some interest to you, and I might mention that I am doing considerable writing for various newspapers and magazines both in California and here in Japan, and I have spoken to Mr. Blake on the subject and he thinks that there would be no objection to my doing this provided I did not sign my name to those writings—and I have agreed with him that this would not be advisable, in view of the fact that the ideas which I have expressed and shall express while I am in the Orient may prove very unpalatable to the average oriental man. [87]

As regards Mr. Boyd's return, nobody here knows just when he is coming back—but I suppose before he leaves San Francisco he will see you, and you will know exactly when he is leaving.

Awaiting your advice with much interest, I remain,
Yours very sincerely,

ATS/CP [88]
American Trading Co.
(Pacific Coast)

224 California Street,
San Francisco, Cal.

Sept. 26, 1918.

Mr. Arthur Tilton Steele,
C/O American Trading Co.,
Tokyo, Japan.

Dear Mr. Steele: I acknowledge receipt of your letters dated August 21st and 30th, which I have read with much interest.

You are having a rather extraordinary trip to Shanghai. You will doubtless be pleased to spend a few months in Japan.

At the request of Mr. Blake I am sending him a copy of our letter of employment with you, also copy of my letter to Mr. Burns re same, so that he will be fully seized with our arrangement.

I do not recollect just what arrangement was made between Mr. Burns and yourself regarding exchange, but doubtless both you and Mr. Burns do.

The arrangement you have made with Mr. Blake should enable you to save considerable money, unless you pay for your living expenses more than I would judge from my experience in Japan last year there would be any occasion for you to do.

You will have to take up the question of settlement of the \$250.00 advanced with Shanghai office. I

daresay Shanghai office will let the matter rest until you reach Shanghai. [89]

Of course, it is not a proper thing for me now to say what should be done in this connection. All this you will appreciate I am sure.

I am pleased to hear that you expect to be married soon. In many ways it will make life much more possible for you in the Orient,—from an economic point of view as well as socially.

With best wishes,

Very truly yours,

LOUIS A. WARD.

LAW/V

Read Oct. 25, 18. [90]

American Trading Co.

(Pacific Coast)

244 California Street,

San Francisco, Cal.

August 19, 1918.

Mr. Arthur Tilton Steele,

C/O American Trading Co.,

Shanghai, China.

Dear Mr. Steele:—I was pleased to receive your note of August 9th advising your safe arrival on board the SS “Kashima Maru.”

Your things have been received in our store room in our basement where they have been crated and Debit Notes for cartage and crating have been forwarded to Shanghai office.

As I, find time, from time to time, I shall have pleasure in writing you regarding some personal matters of which I talked with you. Of course, I

shall be glad to hear from you, personally, whenever you have the leisure and the spirit moves you to write to me.

Sincerely yours,

LOUIS A. WARD.

LAW/V [91]

The Ocean, Accident & Guarantee Corporation, Ltd.

Head Office:

36 to 44, Moorgate St.,

London e, c, 2.

26th November, 1918.

A. Tilton Steele, Esq.,

c/o American Trading Company,

Shanghai, China.

Dear Sir: Your application has been forwarded to us. We notice that apparently prior to accepting your present engagement you were in business on your own account. We attach the usual form for completion under such circumstances and await your further advice in due course.

Yours faithfully,

F. M. E. ARMSTRONG,

Manager & Secretary.

JES/OAK

Replied Jan. 27, '19. Exhibit J. [92]

Jan. 27th, 1919.

Messrs. The Ocean Accident & Guarantee Corpora-
tion Ltd.,

36-44 Moorgate Str.,

London, E. C. 2.

Gentlemen:—

Attention of Mr. T. M. E. Armstrong.

Your favor of Nov. 16 '18 addressed to me c/o our Shanghai Office has just come to hand, & I hasten to reply, so that the matter may be placed before you for final disposal without undue delay.

I have filled in the Answer to questions on the form herein enclosed & trust you will find same entirely satisfactory: should you need further references, as to my reputation and standing, during the two periods of *of* my professional career in Los Angeles & San Francisco respectively I would add the names of the following gentlemen—

Los Angeles 1905-1908.

Judge F. R. Willis—Judge Superior Court Los Angeles. Jos. R. Phillis, 128 So. Albany St. Huntington. Park—Cal. U. S. A.

San Francisco Cal. 1909-1918.

E. W. Wilson, Vice President Anglo & London Paris, National Bank, San Francisco, L. K. Smith c/o Harry Green & Co. Inc. Importers & Exporters 216 Pine Street San Francisco. J. B. Thomas: c/o Northwestern Mutual Life Insurance Co. San Francisco. If I remember aright I gave in my original application at least 5 references— [93]

Messrs. The Ocean Accident & Guarantee Corporation Ltd.

1. Clarence M. Smith, Banker & Capitalist.
2. Edwin J. Thomas: General Agent.
3. Charles A. Murdock. Printer and Publisher.
4. Robert H. Swayne: Steam-Ship Agent.
5. Reynold E. Blight M. A. C. P. A. Los. Angeles.

Hoping that this will complete the case, for your final decision, I am

Faithfully yours,

ATS/AS [94]

Jan. 27th, 1919.

Messrs. The Ocean Accident & Guarantee Corporation Ltd.

55 John Street,
New York.

Gentlemen:—Your form 47ff/63724 dated Oct. 28 '18 addressed to the American Accounting Co.—704 Market Street, San Francisco, was re-directed to the Shanghai Office, of the American Trading Co.—whence it was forwarded to me here—hence the delay in responding thereto.

As regards filling in the answers to the questions in the aforesaid form, if I remember aright, I stated in my application that I was the Managing proprietor of the American Accounting Co.—under which name & style I practiced as a public accountant and auditor, in California since 1905, this being so it is obvious that the answers required cannot be furnished by me.

However I enclose herewith a copy of the form I have filled in, signed & returned to your Head Office

in London, in compliance with their request. I also enclose a copy of my covering letter to them on the subject for your further information.

Hoping that this will complete the case for final disposal, I remain

Yours very truly

ATS/AS [95]

The Ocean Accident & Guarantee Corporation Ltd.
Moorgate Street,
London, 26th, Nov. 1918.

Re your Proposal for Guarantee £2,000.

Note of further particulars required for the information of the Board of Directors.

Mr. A. Tilton Steele.

QUESTIONS.

1. The full address at which you formerly carried on business.
2. The exact nature of the business.
3. The date upon which you started.
4. The date upon which you gave it up.
5. Your reasons for giving it up.
6. Have you any debts in connection with it?
7. Full name and present address or last address known to you of any partners.

ANSWERS.

- Suite #1011-12 (10th floor) Mutual Savings Bank Building, San Francisco, U. S. A.
- Public accounting, auditing, Systematising.
- In Los Angeles, Cal., June, 1905.
In San Francisco, Cal., Jan. 1909.
- July 1, 1918.
- To find in the Orient better opportunities for advancement, along mercantile rather than professional lines.
- No.
- Los Angeles Associate, Reynold E. Blight M. A. C. P. A. Los Angeles, Cal., Hibernia Bldg., or Security Bank Bldg., San Francisco.
- No partners only assistants. Refer to Clarence M. Smith, Banker. 704 Market St., San Francisco, Cal.

N.B. I expect to leave Tokyo
office, where I am now, Act-
ing Chief Accountant—to
take up my position of Chief

Accountant, Shanghai OfficeSignature.

early in April '19. Kindly Date Jan. 25, '19.

expedite matters & Oblige.

[96]

Receipt for Registered Articles.

Received ——— Packets mentioned below for
Registration from American Trading Co., Tokyo,
Japan.

| No. of Order. | Registered Number | Name of Addressee. | Destina- tion. | Post- Class. | age. |
|------------------|----------------------|--------------------------|-------------------|-----------------|------|
| | A | | | | |
| 1 | 867 | Ocean Accident | London | Y | 0.20 |
| | | Accident & Guarantee Co. | | | |
| 2 | 868 | do | New York | | 0.26 |

Kiyo Maru,

J. C.

Total 2.

Registry Clerk. [97]

Feb. 17th, 1919.

W. A. Burns Esq.,
Shanghai,

Dear Mr. Burns:—I suppose you got my card,
which I left at the Grand Hotel Yokohama on Sunday
the 3d inst., after I had waited for you 3 hours—a
dinner engagement at Toko, prevented me from wait-
ing till you returned—and your leaving early the
following morning knocked on the head all hope I
had of meeting you while you were here.

It appears Messrs. Paget & Budell left the office
early on Saturday especially to meet you—but failed
to tell me or even to remember that I would natur-
ally wish to see you—the Head of our Shanghai
Office.

Mr. Boyd our Chief Accountant sailed for San Francisco, on the 12th. inst., the poor fellow had a nasty accident in Kobe, which laid him up for months, and he has only now been able to go on his vacation. Mr. Blake tells me that he will be back by the end of April.

I might observe that the few months I have been here have been valuable experience, and I feel so much better equipped for the Shanghai job, now that I have become familar with the Company's system and methods.

May I enquire when Mr. Manley's agreement expires if my memory serves me right—you mentioned May 1, '19 when I saw you in San Francisco. [98]

Exhibit KI.

Please have no mis-givings as to my ability to take hold of things right way.—rest assured that I shall have complete control—of the work of my department, within a week.

Assuring you of my sincere regret at missing you at Yokohama,

ATS/AS.

I am, Faithfully yours. [99]

Tokyo Club,

Tokyo.,

March 12 '19.

Dear Mr. Burns:—I wrote you a letter soon after your departure from Yokohama, and as I have not heard from you in reply, I am writing to inquire if you received it.

As I expect my intended to be out here about the

middle of next month, and we have planned to get married, and go together to Shanghai, I am naturally anxious to know just when I must report at Shanghai Office.

If you have not already advised me on this point I shall feel much obliged if you will let me know at your earliest convenience.

Assuring you of my loyal and earnest co-operation in the service of the Co. as long as I am working under you,

I remain,
Faithfully yours,
A. TILTON STEELE.

W. A. Burns Esq.
Shanghai.

Returned to me by Mr. Blake, Mar. 28th—No reply from Mr. Burns received as yet. [100]

Exhibit K "2

March 12th 1919.

Messrs American Trading Co.,
San Francisco, Cal.

Dear sirs:—

Attention of Mr. L. A. Ward.

This will serve to authorize you to pay to Mrs. Margaret M. Cosgrave or order up to two hundred and Fifty dollars (C. \$250.00).

Kindly send your debit note for any amount drawn against this credit to this office, charging account of Mr. A. T. Steele.

Thanking you in advance for your kind attention.

Faithfully yours,

American Trading Co.

Acting Accountant.

ATS/SI.

Exhibit I.

[101]

March 19, 1919.

D. H. Blake, Esq.,

Vice-president & General Manager,

American Trading Company, Tokyo.

My Dear Sir:

Re My Three Year Contract With the Company.

Replying to your letter of yesterday's date, I beg to confirm the understanding we came to at the close of my interview with your good self yesterday on the above subject:

That I did not feel disposed to come to any final decision in the matter without consulting Mr. Ward, who, with the knowledge and assent of Mr. Burns, made the above-mentioned contract with me.

While I deeply appreciate your offer of mediation and was sincerely confident of receiving the fullest consideration at your hands. I could not make up my mind on the subject without first hearing from Mr. Ward.

Your concurrence with me on this point made the situation so much easier for all concerned, and I am sure I left the impression with you that I had concluded that I was determined in fact to have this unfortunate affair with the Company adjusted in an amicable rather than a contentious spirit.

Since writing the above I have received a copy of your letter to Mr. Ward, 46-F, which was addressed to him by you in keeping with our conversation.

Would you permit me to make clear a passage [102] in that letter which is somewhat ambiguous. I refer to the part wherein you say that "Mr. Steele is not altogether satisfied with life in Japan and that he is not sorry that his stay here is not to be prolonged."

This may be construed by Mr. Ward to mean that I am not in favor of serving the Company in Japan. With your kind permission I would like to state briefly what I have already told you in this connection, that I had reference to my *business life* in Japan, as a member of the Tokyo organization of the Company *under existing conditions*. Those conditions, as you are aware, tend to make the accountant of the Tokyo Office virtually, if not verbally, subordinate in matters of accounting to the other departments—Import, Engineering and Building—a situation which in my opinion no self-respecting experienced American Accountant could endure for any great length of time.

However, this is not the time for details—suffice it to say, and I sincerely trust you will take what I say in good part, that in matters relating to accounts and collections (not to mention anything else) our office wants to be thoroughly reconstructed, i. e., reorganized along modern lines, to meet the needs and requirements of the coming post-war

competition that other large organizations like ours in Japan are preparing for.

Of course, Japan is not America—we all realize that, and local conditions will have to be met, but the science of Accounting, as practiced in the United States to-day, is based on “Common Sense,” and an expert accountant trained in the United States School of Practical Accounting, no matter where he goes or what business [103] he is engaged to serve, may safely be trusted to find a practical solution to every problem that arises in his line—if *he be given the requisite authority and encouragement to operate in his particular field of work.*

I trust my special report, when it is completed, will prove of sufficient merit to receive your endorsement, and I need hardly add in this connection that the approval of a gentleman of your wide business grasp and experience would be highly valued by me.

Very respectfully yours,

ATS/CP.

1. Sent copy of this letter to Mr. Ward, 3/19. Also wrote him briefly on the subject.

2. Wrote L. A. W. again about it on Apr. 4, -19.
[104]

March 19, 1919.

Letter No. 46—F.

L. A. Ward, Esq.,

Vice-president American Trading Co. (Pacific
Coast)

San Francisco, California.

Dear Mr. Ward:

Mr. A. Tilton Steele:

I enclose herewith copy of letter which I have to-

day addressed to Mr. Steele.

You will perhaps not be prepared for the news that Mr. Steele is not going to Shanghai to our office at that port. I presume that when Mr. Burns went through San Francisco this matter was not discussed with you, because Mr. Burns thought at that time that Mr. Steele would replace Mr. Manley after the return of Mr. Boyd to Tokyo from his short holiday. In the meantime Mr. Burns has made satisfactory arrangements with Mr. Manley, and desires to continue his services with the Company—and that being the case, he has no position for Mr. Steele.

I have explained the whole situation to Mr. Steele, and I think he fully understands the reason for the action which has been taken. I am pleased to say that he has accepted the situation very gracefully indeed and is quite willing to come to a friendly understanding with the American Trading Company.

I have suggested that in view of the fact that his contract was made with your good self, he return to San Francisco in due course and come to a settlement with you, and he has been very agreeable to this suggestion.

Exhibit M. 3.

[105]

I think I am correct in saying that Mr. Steele is not altogether satisfied with life in the Far East, and that he is not sorry that his stay is not to be prolonged even to the extent of the contract which he entered into. He is, however, desirous of obtaining some kind of a government appointment in

India, and he tells me that you were fully acquainted with his wishes in this respect at the time you entered into negotiation with him on behalf of the American Trading Company. He would like us to render him such assistance as we can to enable him to get such an appointment, and I have told him that we would provide him with such letters of recommendation as we could, but beyond that I cannot see that we can be of any material assistance. However, I hope that you will do anything that you are able to do in his behalf.

I cannot say at this writing just when Mr. Steele will return to San Francisco, but I am expecting that Mr. Boyd will be back here not later than the end of April, and in that case probably Mr. Steele could get away from here some time during May.

I am giving Mr. Steele a copy of this letter.

I remain,

Very truly yours,

DHB/CP

Enclosure. [106]

P. S. Since writing the above, Mr. Steele has called my attention to the fact that my remarks with reference to his not being satisfied with life in the Far East are not exactly in accordance with facts. His position is that he is not pleased with life in Japan, but that as far as China is concerned, he believes that he would have been entirely satisfied to have completed his contract in that country. [107]

D. H. B.

April 30th, '19.

Mr. D. H. Blake, Vice-president & General Manager, Tokyo Office.

Dear Mr. Blake: With due deference to you as the Head of our Company, allow me to point out to you that there are three matters still in abeyance upon which I have not as yet learned your decision. First, Building Department Stock Muddle.

In view of the facts that our Auditor's Report dated Sept. 26, '18, covering their audit of our accounts as of June 30, 1918, makes no mention of this condition, and as I have been in charge of the Accountant's Department since October last, and the same condition existed when I took over charge from Boyd, and during the past few months I have made repeated efforts to straighten out the muddle, without however receiving any support either from your good self or from Messrs. Mauger and Moss, I feel that I ought officially to be exonerated from any blame or responsibility in the premises.

Re Thorough Examination of Our Kahn Materials Stock a/c (0/2230).

As I am of the same opinion as Messrs. Harold Bell & Taylor within regard to the adjustment of this account in our Invoice ledger, in fact had advocated the same procedure more than once, and do believe that the right way to ascertain the actual results of the dealings of our Building Department during this period 1917-18 is to go over this old 0/2230 a/c from October, 1917, if not earlier, so as to [108] take into the main books the actual

profit (or loss) accrued through Contracts, on stock, which has never been done.

May I not know whether or not you are in accord with me on this point?

(Re Improvements in the System of Accounts & Collections.

May I know definitely if the suggestions embodied in my letter to you dated April 12, 19, are approved by you, and whether or not it is your desire that I should remain in the Tokyo Office to co-operate with Messrs. Mauger & Boyd in the proposed changes.) Your decision on this point has not been made known to me as yet.

As these are matters that concern my association with the Accountant's Department and should be decided by you before I may properly be called upon to deliver the Keys of my Office and make over charge of my department to Mr. Boyd, I trust you will be good enough to advise me on the points herein stated and thereby oblige,

Yours faithfully,

AMERICAN TRADING CO.

A. T. S.,

Acting Accountant. [109]

AMERICAN TRADING COMPANY.

I, Yurakucho Itchome Kojimachiku,

Tokyo, April 30, 1919.

A. Tilton Steele, Esq.,

Acting Account.,

American Trading Co., Tokyo.

Dear Sir: I am in receipt of your letter of even date.

With regard to Building Department Stock, I would say that while I do not approve of your remarks, I do not hesitate to absolve you from any responsibility in the premises. I cannot recall that there has been any suggestion of placing any responsibility on you in connection with this particular account.

I note your suggestion re. the handling of Kahn stock, and thank you for same. I feel sure that we shall find a satisfactory solution of this matter.

(With reference to your letter of the 12th inst., I am keenly interested in your suggestion, but it is quite impossible for me to say at this time whether or not we shall put your suggested scheme into operation.) In any case, I have no intention of creating a special department at the present time for the work in question.

I was not aware that you were awaiting my decision on this point, as I thought it was already understood between us that your duties would terminate simultaneously with Mr. Boyd's return to the office. [110] However, in order that there may be no further misunderstanding I would request you to hand over the management of the Accountant's Department to Mr. Boyd as soon as possible, which you have told me verbally would be to-morrow.

I remain,

Yours very truly,

D. H. BLAKE,

Vice-pres.

DHB/Cp [111]

May 1, 1919.

Mr. D. H. Blake,

Vice-president and General Manager,

American Trading Company,

Present.

Dear Sir: I thank you for yours of yesterday in answer to mine of even date.

If you will be so good as to refer to your letter dated Aug. 30, 1918, embodying the terms of your Agreement with me, you will find that while it was understood between us that I was to hold my position of Acting Accountant until Mr. Boyd's return to the office, that arrangement was conditional upon my engagement in the Shanghai office of the Company in terms of my original contract.

Since Mr. Burns, as you say in yours of March 19, 19, "has made satisfactory arrangements with Mr. Manley to remain with the Company and does not now want me to come to the Shanghai office," I must look to you as Vice-president and the highest officer of the Company in the Orient, to fulfil the terms of your agreement with me which confirmed my original contract with the Company, regardless of Mr. Burn's or Mr. Ward's responsibility in the premises.

I have no desire to thrust myself on the Shanghai office, but since I gave up my practice of Public Accounting in San Francisco to come to the Orient upon the [112] distinct and expressed conditions Exhibit 03.

in my contract that I would receive not less than *Ten Thousand U. S. Gold Dollars* as my cumulative

salary for the entire period covered by my contract and bonuses according to the rules of the Company, and as I am willing, and even desirous of serving the Company in terms of my agreement, I think I am entitled to a reasonable compensation, if you wish to cancel both agreements.

What that compensation ought to be is not for me to state, but in order to bring about an equitable settlement or an adjustment free from unpleasantness, I am prepared to place the matter in the hands of our Ambassador in Tokyo, Mr. Roland Morris, for arbitration.

I trust you will agree with this suggestion and permit me to retain my office till this is effected, or some understanding is reached whereby my interests under my two agreements with the Company are properly protected.

Yours very truly,

AMERICAN TRADING CO.

A. T. STEELE,

Acting Accountant. [113]

I trust that on further consideration you will agree to relinquish your office and give up the keys to the safe and desks at once, and thus avoid any unpleasant consequences. I remain,

Yours very truly,

AMERICAN TRADING COMPANY.

D. H. BLAKE,

Vice-president.

DHB/GI. [114]

May 2, 1919.

H. E. Roland S. Morris,
American Ambassador, Tokyo.

Sir: (In accordance with your kind suggestion, we the undersigned, agree to the Arbitration of our differences by the Honorable Mr. Potter, and undertake to abide by and put into effect whatever award he makes).

We remain, Dear Sir,

Yours very respectfully,

AMERICAN TRADING CO.

(Signed) D. H. BLAKE,

Vice-president.

AMERICAN TRADING CO.

A. T. STEELE,

Acting Accountant. [115]

Exhibit O5.

May 3, 1919.

Mr. D. H. BLAKE,
Vice-president and General Manager,
American Trading Co.,
Present.

Dear Sir: Upon my arrival this morning, according to arrangement, to turn over the notes, securities and other contents of the Company's to Mr. Boyd, I found that my desk had been opened in my absence by Mr. Boyd, with a duplicate key, which he showed me; and this was done without my knowledge or assent.

I think you will agree with me that this action was irregular, and calculated to annoy me needlessly, and whilst I do not for one moment suggest

that any documents were improperly abstracted, I must for the sake of form disclaim any responsibility for the contents of furniture opened during my absence.

Very truly yours,

AMERICAN TRADING CO.

A. T. STEELE,

Acting Accountant.

ATS/CP [116]

Exhibit P. 1.

AMERICAN TRADING COMPANY,

I, Yurakuche Itcheme, Kejimachiku,

Tokyo, May 3, 1919.

Mr. A. T. Steele,

Present:

Dear Sir: We have for acknowledgment your letter of to-day's date in which you state that during your absence Mr. Boyd opened your desk with a duplicate key and to which action you object.

Your action in not coming to the office until 9:45 this morning caused Mr. Boyd to open your desk in conjunction with the Agent of the Company, so that the business of the Company might be carried on. Documents of any value should not be kept in desks but in safes provided for this purpose, and the Agent of the Company has a perfect right to inspect the contents of any employee's desk at any time for the reason that these desks are supposed to contain nothing but Company property, and as

stated above, documents of no particular value.

Yours truly,

AMERICAN TRADING CO.,

G. N. MAUGER,

Agent.

GNM/MRD.

EXHIBIT P2.

[117]

AMERICAN TRADING COMPANY,

I, Yurakuche Itcheme, Kejimachiku,

Tokyo, May 6, 1919.

A. T. Steele, Esq.

5, Enekizaka-machi, Akasaka,

Tokyo.

Dear Sir:—I shall be obliged if you will kindly furnish me with certified copies of all letters which you have addressed to Mr. Ward, during the time you have been connected with this office, which in any way refer to the business of the office.

Your prompt compliance with this request will no doubt hasten the arbitration of our differences, and as that would no doubt be in keeping with your own ideas I hope you will not delay complying with my request.

I would also be glad to have you state to me in writing whether or not you sent to Mr. Ward a copy of our last Auditors' Report.

I have again to remind you that you have failed to turn over a number of keys which are urgently required by us. I understand that the desk in our office for which you hold the key contains only your private belongings, but I would call to your attention that this fact does not offer any excuse for you

retaining possession of our property. Kindly let us have all our keys at once.

I enclose herewith an Account Current showing [118] that you have a debit balance of Y541.21, on our books, which we request that you pay in at once. I remain,

Yours very truly,
AMERICAN TRADING COMPANY.
D. H. BLAKE,
Vice-president.

DHB: McD.
EXHIBIT Q1. [119]

Accountant's Dept.

Tokyo, May 5th, 1919.

Mr. A. T. Steele Personal A/C.

In Account Current with the American Trading Co. Interest at 6% p. a.

| | Dr. | Days. | Interest. | Amount. |
|----------|-------------------------------|-------|-----------|---------|
| 1918. | | | | |
| Aug. 27 | To, Cash paid, W. W. Baer | 251) | | (10.00 |
| " | " do " | " | 1.13 | (17.50 |
| Sept. 30 | " Telegram A/C. | 217 | .03 | .90 |
| Nov. 25 | " Cash paid, Y. Ikeda | 161 | .06 | 2.45 |
| 30 | " Telegram A/C | 156 | .31 | 12.10 |
| Dec. 9 | " Cash paid, Standard Oil Co. | 147 | .45 | 18.50 |
| 6 | " D/O.: #4923 I C/—Succotash | 150 | .31 | 12.76 |
| | 2 doz. | | | |
| 9 | " " " 4958 I C/—Sunflower | 147 | .40 | 16.80 |
| | Asparagus | | | |
| 11 | " " " 4998 I C/—Corn Flakes | 145 | .35 | 14.55 |
| | 3 doz. | | | |

1919.

| | | | Days | Interest. | Amount. |
|---------|---|-------------------------------|------|-----------|---------------|
| Apr. 14 | " | Cash paid, International Bank | 21 | .64 | 185.00 |
| 24 | " | do do | 11 | .90 | 500.00 |
| 30 | " | do A. T. Steele | 5 | .45 | 545.42 |
| May 5 | " | Balance..... | | 1.57 | |
| | | | | <hr/> | |
| | | | | YEN | 6.60 1,335.98 |

Cr.

1918.

| | | | | | |
|----------------|-----|----------------------------|----------------------|-------|---------------|
| Dec. 31 | By, | Traveling Expenses A/C. | 125 | 2.86 | 139.20 |
| Mch. 31 | " | Cash. | 35 | 3.74 | 650.00 |
| May 5 | " | Balance Interest A/C at 6% | | | 1.57 |
| P. A. to date. | | | | | |
| | " | " | Balance carried down | v | 545.21 |
| | | | | <hr/> | |
| | | | | YEN | 6.60 1,335.98 |

[120]

| | | | | |
|-------|----|-------------------------------|-----|--------|
| May 5 | To | Balance brought down (due us) | YEN | 545.21 |
|-------|----|-------------------------------|-----|--------|

E. & O. E.

AMERICAN TRADING CO.,

BOYD, Accountant.

Dr. Interest A/C. Yen 1.57) [121]

Exhibit Q 2.

[121]

(Letter press copy.)

Tokyo, May 5, 1919.

Mr. D. H. Blake, Vice President,
American Trading Company, Tokyo.

Dear Sir: I am in receipt of your letter of the 6th inst., just now and regret that I cannot accede to your request to furnish you with certified copies of letters which I have addressed to Mr. Ward which in any way refer to the business of the Company during the time I have been connected with the Tokyo office; such letters as are relevant to the issues between us will be produced by me to the arbitrator, The Honorable Mr. Potter, and you will no doubt receive notices of them in due course. As a matter of fact those letters were taken by the company's stenographer whose note books presumably are available to you for reference.

Referring to para. 3 of your letter under reply I have not sent to Mr. Ward a copy of the auditor's last report.

I have read para. 4 of your letter with some surprise as it was definitely arranged between Mr. Boyd, an officer of the Company and myself, his predecessor in office, that I was to attend at 4 p. m. on Thursday (today) to remove my private belongings from the desk to which you refer, your reference to a number of keys is incorrect. I have two keys only as Mr. Boyd knows, and both of them will be handed to him at the appointed time in return for which I shall expect a clean receipt from the company.

Regarding my account I am putting in a claim

for damages, with the arbitrator and I must request you to hold over this account till the arbitrator has rendered his award.

Very truly yours,

(Sgd.) A. T. STEELE.

Exhibit Q3.

[122]

A. T. STEELE

vs.

AMERICAN TRADING COMPANY

DEFENDANT'S EXHIBITS. [123]

Defendant's Exhibit No. 1.

June 10th, 1919.

Letter No. 893A.

W. A. Burns, Esq.,

American Trading Co.,

Shanghai.

My dear Burns: I enclose herewith correspondence which we have had in connection with the cancellation of this man's contract. I should have sent this correspondence to you some time ago excepting for the fact that I was waiting to get the arbitrator's award, so I could hand the whole thing over to you at one time. The award only came in yesterday, and from same you will note that the decision is that Mr. Steele is to adjust his differences with Mr. Ward in San Francisco.

This is the identical arrangement that I proposed and which I thought was acceptable to Mr. Steele.

I might tell you that he acted abominably at the time I instructed him to turn over his duties to

Boyd, and undertook to make all the trouble possible. I presume I shall still have some further trouble in connection with getting him a steamship passage, because all steamers are fully booked up and none of the lines are keen on booking anyone except for months ahead.

If I could be sure of Steele's co-operation I could do something, but without that it would be very difficult. However you may be sure that I will do the best I can in the interests of the Company, and I hope to get Steele away within the next few weeks. [124]

I have not heard from him since the award was handed in, but I am sure it will be very unsatisfactory to him, because I know he wishes to remain in the Orient, and would like to do so at our expense.

His anticipation was to go over to Shanghai, in which case you would no doubt receive a call from him. He is of course very sore against the company, and would naturally do anything he could to hurt us, but as far as I can see the possibilities in that direction are very limited.

I remain,

Very truly yours,

D. H. BLAKE.

DHB—McD

Enc. [125]

Defendant's Exhibit No. 2.

May 10th, 1919.

Honorable William Potter,
c/o American Embassy,
Tokio.

Dear Sir: We acknowledge your letter of the 2d inst., and wish to express our appreciation of your willingness to arbitrate the differences which have arisen between our Company and Mr. A. T. Steele. We further desire to record our appreciation of the good offices of His Excellency Ambassador Morris, which have resulted in your undertaking this task.

In the beginning we wish to explain that it has never been our intention to evade our responsibilities or disregard Mr. Steele's rights under his contract.

The correspondence submitted will show you that Mr. Steele was originally employed on behalf of our Shanghai office, but later on he was held at Tokyo to assume, temporarily, the duties of Mr. Boyd, while the latter took a short holiday.

In the meantime it developed that Mr. Steele's services were not required at Shanghai, and we at once began negotiating with him for the cancellation of his contract. In view of the fact that he had been originally employed by Mr. Ward in San Francisco, who was a personal friend of his, we recommended that the matter should be referred to him for settlement, and we had every reason to believe that this arrangement would be entirely satisfactory.

You will note that we gave Mr. Steele written

notice that his services with this office would terminate [126] on Mr. Boyd's return to Tokio. He took no exception to the arrangement at the time, and in fact as late as April 29th, he told the writer and Mr. Mauger, the agent of the Tokio office, that he would turn over his duties to Mr. Boyd the following day. This, however, he failed to do, notwithstanding our repeated requests. Owing to his arbitrary and unwarranted actions our business was seriously interfered with for several days.

As an instance of the inconvenience we were subjected to we would say that our accountant's safe remained closed for two days, during which time we were deprived of the use of our securities and other important documents.

During this time we had agreed to Mr. Steele's demand for an arbitration so we contend that there was no ground for his arbitrary and illegal action.

We might point out that Mr. Steele's rights under his contract would have been just as secure without this "hold up" and we feel sure you will agree with this statement.

We would finally put on record that it was not until the 8th inst. that Mr. Steele handed over the last of our keys which were in his possession.

We now come to the character of Mr. Steele's work while he was in this office. He adopted the attitude from the start that our system of bookkeeping was all wrong, and this of course led to more or less friction and unpleasantness.

During the first few months of his stay here his attendance on the office was so irregular as to cause

great hindrance to our business. It very frequently happened that he did not turn up at the office [127] until 9:30 o'clock, sometimes 10 o'clock, or even later—this in spite of the fact that a notice is posted that our office hours are from 9 o'clock.

If required we can offer numerous witnesses to prove the correctness of the above statements.

On three occasions the writer called Mr. Steele to task for his disregard of our office rules, and during one of these interviews we told him that if he found it impossible to comply with our regulations he had better return to San Francisco. Notwithstanding our repeated admonitions he still persisted in ignoring the office rules, and we submit that on this point alone we could have found sufficient justification for cancelling his contract.

We now wish to discuss Mr. Steele's unauthorized correspondence on affairs pertaining to our office.

We enclose copies of his letters of April 17th and April 24th, addressed to Mr. L. A. Ward of San Francisco.

These copies are certified to us by Miss Paul, who was our stenographer at the time they were written, but who has since left our employ. She is, however, still in Yokohama and would be willing to answer any questions if called upon to do so.

Mr. Steele told the writer that he had addressed certain letters to Mr. Ward, but never mentioned their character. He also intimated that he had taken an extra copy for our files, but at the same time never offered to hand them over.

We now have every reason to believe that his apparent willingness that we should see this correspondence was pure camouflage, as it must be apparent to anyone that had we seen the letter of April 24th, it [128] would never have left our office.

Since the beginning of this month we have repeatedly asked Mr. Steele, both verbally and in writing (see copy of our letter of May 6th) for copies of his correspondence with Mr. Ward, but up to this writing he has failed to comply.

We might explain that the addressee of these letters is the Vice-president and General Manager of the American Trading Company (Pacific Coast), a Company with which we are associated, but which is a separate and distinct organization.

Mr. Ward has no jurisdiction over this office and is not even an employee of the American Trading Company proper.

We do not even intimate that Mr. Ward was a party to this clandestine correspondence and we even believe that he will disavow any connection with it.

We do not know how many more letters were written or the nature of their contents, but the opening paragraph of the letter of April 17th furnishes proof that there were others. This paragraph also shows that Mr. Steele was keeping Mr. Ward advised of "developments."

We would also like to call your attention to the first paragraph of the letter of April 24th in support of our statement that we thought Mr. Steele was agreeable to handing over his duties to Mr.

Boyd on the latter's return.

We do not undertake to deal in detail with the balance of the subject matter of this letter, but we might remark that against Mr. Steele eight months service in the Company the men whom he subjects to such severe criticisms and innuendoes have the following records: [129]

Mr. Blake, 23 years, Mr. Mauger, 20 years, Mr. Boyd, 17 years and Mr. Moss, 9 years.

We would further mention that Mr. Mauger, previous to coming to Tokio, was the chief accountant of our company in New York for a number of years, and is, presumably, as capable a man on books as Mr. Steele, and also has the welfare of the Company quite as much at heart.

We submit that Mr. Steele in carrying on such correspondence was practicing both deception and treachery, and on either count he has committed an unpardonable offense.

If he acted with a realization of what he was doing, then certainly he has no excuse to offer, but on the other hand if he pleads ignorance, he convicts himself of being deficient in the most elementary principals of business.

It seems incredible that any man endowed with ordinary intelligence could so abuse the confidence of his employers as Mr. Steele has done in carrying on this correspondence.

We would respectfully submit for your consideration the following points:

1. Would Mr. Steele have been justified in writing such a letter as that of April 24th, even to the

head office of the company, without the knowledge and consent of his superior officer?

2. Assuming for argument's sake that your answer to the above is in the affirmative, would he have been justified in sending the same letter to a man who had no connection whatever with the office which employed him? [130]

3. Having committed this offense has he not proven himself irresponsible and untrustworthy?

4. In view of all the other facts would we not have had good and sufficient grounds for dismissing him from our office?

In conclusion we have to say that under ordinary circumstances we would have had no other thought than to treat Mr. Steele liberally, but in view of the unsatisfactory character of his work and the treachery he has displayed toward his office and employers, we now prefer that the case be settled entirely on its merits.

Respectfully submitting the above, and with renewed thanks for your kind assistance, we remain, dear sir,

Yours very truly,

DHB-McD

Enclosures: Copy of Mr. Steele's contract dated May 27, 1918.

Copy of our letter to Mr. Steele dated March 19, 1919.

Copy of our letter to Mr. Ward, dated May 6, 1919.

Copy of Mr. Steele's letter to Mr. Ward, April 17, 1919.

Copy of Mr. Steele's letter to Mr. Ward, April 24, 1919. [131]

Defendant's Exhibit No. 3.

Tokyo, March 19, 1919.

D. H. Blake, Esq.,

Vice-Pres. & General Mgr.,

American Trading Co., Tokio.

My dear Sir:—

Re. My Three Year Contract With the Company.

Replying to your letter of yesterday's date, I beg to confirm the understanding we came to at the close of my interview with your good self yesterday on the above subject.

That I did not feel disposed to come to a final decision on the matter without consulting Mr. Ward, who, with the knowledge and assent of Mr. Burns, made the above-mentioned contract with me.

While I deeply appreciated your offer of mediation and was sincerely confident of receiving the fullest consideration at your hands, I could not make up my mind on the subject without first hearing from Mr. Ward.

Your concurrence with me on this point made the situation so much easier for all concerned, and I am sure I left the impression with you that I had concluded that I was determined in fact to have this unfortunate affair with the company adjusted in an amicable rather than a contentious spirit.

Since writing the above I have received a copy of your letter to Mr. Ward No. 46F, which was addressed to him by you in keeping with our conversation.

Would you permit me to make clear a passage in that letter which is somewhat ambiguous, I refer to the part wherein you say that "Mr. Steele is not altogether satisfied [132] with life in Japan and that he is not sorry that his stay here is not to be postponed."

This may be construed by Mr. Ward to mean that I am not in favor of serving the Company in Japan. With your kind permission I would like to state briefly that I have already told you, in this connection, that I had reference to my *business life* in Japan, as a member of the Tokio organization of the Company under existing conditions. Those conditions, as you are aware, tend to make the accountant of the Tokio office virtually, if not verbally, subordinate in matters of accounting to the heads of the other departments, import, engineering and building, a situation which in my opinion no self-respecting experienced American Accountant could endure for any great length of time.

However, this is not the time for details—suffice it to say, and I sincerely trust that you will take what I say in good part, that in matters relating to accounts and collections (not to mention anything else) our office needs to be thoroughly reconstructed, i. e. reorganized along modern lines, to meet the needs and requirements of the post-war competition that other large organizations like ours in Japan are preparing for.

Of course, Japan is not America—we all realize that, and local conditions will have to be met, but the science of accounting, as practiced in the United

States today, is based on “common-sense” and an expert accountant trained in the United States school of practical accounting, no matter where he goes or what business he is engaged to serve, may safely be trusted to find a practical solution to every problem that arises in his line—if he can be given the requisite authority and encouragement to operate in his particular field of work.

I trust my special report when it is completed, will [133] prove of sufficient merit to receive your endorsement, and I need hardly add in this connection that the approval of a gentleman of your wide business grasp and experience would be highly valued by me.

Very respectfully yours,

(Sgd.) A. TILTON STEELE.

ATS-CP [134]

Defendant's Exhibit No. 4.

Arbitration of case A. Tilton Steel; vs. D. H. Blake, Vice President, American Trading Co., Tokyo, Japan.

Mr. A. Tilton Steele has a contract with the American Trading Co., (Pacific Coast) a company which Mr. D. H. Blake states is an associated but with a separate and distinct organization from his American Trading Co., in Tokyo. The American Trading Co., (Pacific Coast) signed by Lewis A. Ward, Vice-president and Manager makes a three year contract from July 1st, 1918, with Mr. Steel as chief accountant at their Shanghai office including transportation thereto. On his way to Shanghai

Mr. Steele was stopped at Yokohama by wireless from Mr. Blake and requested to assume temporarily the duties of a Mr. Boyd of the Tokyo office while the latter was away on holiday. In the meantime it is developed that Mr. Steele's services were not needed at Shanghai and Mr. Blake states in writing that he began to negotiate with Mr. Steele for a cancellation of his contract and recommends to Mr. Steele that the matter should be referred to Mr. Lewis A. Ward, vice president and manager of the American Trading Co., (Pacific Coast) who had made the contract hereinbefore mentioned. Mr. Blake also writes that he never had any intention to disregard Mr. Steele's rights under this contract. In Mr. Blake's letter dated March 19th, 1919, he writes in part as follows: "We have received word from Mr. Burns, agent of Shanghai office that as he has made satisfactory arrangements with Mr. Manley (the chief accountant whose position under the contract Mr. Steele was to take) to remain with the Company, he Mr. Burns did not now wish Mr. Steele to come to Shanghai. We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April we have no further use for your services [135] here, we cannot say that your recourse will be under your contract, but as intimated the other day the writer will be glad to render you such assistance as he can in order to effect a mutual satisfactory settlement—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises."

Mr. Blake's next letter is May 6th, in which he demands the return of a number of keys which he claims belongs to the company and notifies Mr. Steele that he has a debit balance of Y541.21 which he asks payment of at once to Mr. Blake. Mr. Blake's letter to Mr. Steele dated August 27th, 1918, employs him temporarily in Tokyo for practically the same salary as his contract, said temporary employment to be for such time as Mr. Boyd is absent on holiday which Mr. Blake estimates will be about six months. Mr. Blake further adds in this letter this time will of course apply to Mr. Steele's three year term as mentioned in original contract. Mr. Blake concludes this letter as follows: "It is understood between us that this temporary arrangement does not prejudice any verbal understanding which you (Mr. Steele) may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

Mr. Steele also claims that he had a verbal understanding in San Francisco with Mr. Burns of the Shanghai office, that his passage back to San Francisco including all legitimate travelling expenses were to be paid by the Company and that both Mr. Ward and Mr. Burns stated to him (Mr. Steele) that this was the custom of the company in all cases of covenanted servants and that Mr. Steele would of course be treated in the same way.

After reading over carefully the briefs which have been submitted by both Mr. Blake and Mr. Steele I am of the opinion [136] that the matter of the three year contract should be referred to Mr.

Ward in San Francisco for settlement.

Second: That Mr. Blake should pay Mr. Steele in full until such time as Mr. Steele can secure first class passage back to San Francisco less any indebtedness that may be proved that Mr. Steele owes Mr. Blake.

Hoping that this conclusion may be mutually satisfactory, I am, gentlemen,

Yours very sincerely,

(Signed)

P. S. Mr. Steele's passage to San Francisco to be paid by Mr. Blake's Corp.

To Mr. D. H. Blake,

Vice-president American Trading Co.,

Tokyo, Japan. [137]

Defendant's Exhibit No. 5.

April 24, 1919.

Mr. A. L. Ward,

Vice-pres. & Gen. Mgr.,

American Trading Co., (Pacific Coast),

San Francisco.

My dear Mr. Ward: I am just informed that Mr. Boyd will be here on Monday next, and I shall have to hand over charge of the accountant department to him on the first of May.

I expect the auditor's report in any day now, and judging from what Mr. Bell has told me I believe that his firm will not certify to the correctness of the account except in a modified form unless and until a thorough investigation of the accounts of the building department has enabled him to verify cer-

tain stock balance carried forward to 1919.

Such an investigation would entail a great deal of time, labor and expense, and I have my doubts as to whether Mr. Blake would deem it advisable to incur this expense, particularly at this time, when he is busy organizing a new company to take care of the Truscon Building material interests as a separate concern.

I fully realize the inexpediency of going into the accounts of our building department at this time, as any trouble which may arise out of the investigation would perhaps prejudice the interests of the company in this new enterprise.

Be that as it may, I am sure that were the actual facts in their entirety relating to the accounts of the building department known to the head office they would agree with me that an investigation was very necessary. As Mr. Blake remarked to me when I called his attention [138] to the fact that the Kahn materials stock had never been verified and that account sales were made up and passed into our books upon the O. K. of Mr. Moss, that Mr. Moss practically fixed a profit on each job and thereby his commission as well, the accountant having no authority to question or to supervise his figures, that "Such a situation would be positively alarming" were it not for the utmost confidence he had in Mr. Moss' integrity and knowledge of the business.

I have not completed my special report to Mr. Blake on the subject of the existing conditions in the accounting department, and I feel from the way he has treated my suggestions in regards to collec-

tions that it would be labor lost were I to continue my efforts in that direction, and I am the more led to this conclusion after a conversation which I had recently with Mauger. This being so, I shall probably go to Shanghai and shall await your advice there instead of here, unless of course after Mr. Boyd's arrival here I see a disposition on the part of Mr. Blake to carry out my suggestions to the end of utilizing my services in the Tokio office for at least the period covered by my contract with the Company.

That the Tokio accounting department needs to be reorganized upon a modern basis is admitted by Mauger, who says in this connection that he and Boyd have been talking about it ever since he came from the Philippines in 1917, but from the time I have been here both Mr. Blake's and his attitude have been to defer any action to the end of improving conditions in the accounting department until Mr. Boyd got back, and now that Mr. Boyd will soon be here I expect that Mr. Blake will tell me that these improvements can be affected by Mauger and Boyd, without having another [139] high-priced accountant to elaborate with them. Upon this point I shall have something to say, and it is possible that what I will say will not be entirely acceptable to Mr. Blake or to Messrs. Mauger and Boyd—but I want to assure you that whatever I might say or do in this connection will be prompted by only one thought, actuated by only one motive, that is to better serve and safeguard the interests of the company than they have been in the past.

Each department had here appears to have a separate organization as if those departments were distinct entities or concerns subsidiary to the parent organization in New York but operating independently, as it were, of each other, the accountant department of the company being used merely to record their transactions to receive and disburse moneys, borrow funds to carry on the business, to retire their drafts, to investigate their financial standing of their customers and to hold in their behalf the securities deposited by those customers, without, however, any right, title or authority to look into the affairs of their respective departments. This arrangement often causes confusion between the accountant department and the other departments.

For example, the other day a check for about nine thousand yen came in by registered mail, was handed over by me in the usual course to our credit man, who went with it to the department where it belonged to get the requisite paper memos for purposes of record and receipting, and the check was duly deposited on that day. Two weeks later the head of that department comes in to me and says that in response to his request a settlement from the same company he had been informed that payment had already been made and he did not know anything about it.

This sort of thing happens very frequently due to the fact that there is not proper co-ordination of functions [140] between the sales managers, departments and the accountant, and too much dupli-

cation of records, too much unnecessary clerical work done by all departments concerned, when the accountant's department, if properly organized could handle everything to the entire satisfaction of all departments concerned.

I am merely touching upon the general condition existing. To go into details with you would be a voluminous task and furthermore would necessitate your being here to see things in operation, and if you were here you or any keen up-to-date American business man familiar with American methods would be forced to come to the same conclusions as I have.

Hoping to hear from you in answer to my letters of last month before I leave here, which will be by the first boat I can get passage on to Shanghai, I remain,

Very sincerely yours,

ATS-CP

I hereby certify that the foregoing letter is an exact copy as dictated by Mr. Steele and as taken from my stenographic notes.

Witness:

[141]

Defendant's Exhibit No. 6.

April 17, 1919

Mr. A. L. Ward,

Vice President and General Manager,

American Trading Co., (Pacific Coast)

San Francisco.

My dear Mr. Ward:

Since addressing you last there have been no new developments to advise you of.

The conference with Messrs. Bell & Taylor took place some days ago, and they are apparently still considering matters, for their report and statements are not forthcoming as yet. As soon as they come to hand and Mr. Blake is made aware of the actual condition existing, I shall make my special report to him and await his decision.

Perhaps the enclosed clipping may be of some interest to you and I might mention that I am doing considerable writing for various newspapers and magazines, both in California and here in Japan, and I have spoken to Mr. Blake on the subject and he thinks that there would be no objection to my doing this, provided I did not sign my name to those writings—and I have agreed with him that it would not be advisable in view of the ideas I have expressed, and shall express while I am in the Orient, may prove very unpalatable to the oriental man.

As regards Mr. Boyd's return, nobody here knows just when he is coming back, but I suppose before he leaves San Francisco, he will see you and you will know exactly when he is leaving.

Awaiting your advice with much interest, I remain,
Yours very sincerely,

ATS—SP. [142]

I hereby certify that the above is an exact copy of the letter dictated to me by Mr. Steele, as taken from my stenographic notes.

Witness:

_____ [143]

Defendant's Exhibit No. 7.

March 19, 1919.

A. Tilton Steele, Esq.,
American Trading Co.,
Tokio.

Dear Sir: With reference to our conversation of a few days ago, we beg to confirm what we told you at that time, to the effect that we had received word from Mr. Burns, agent of our Shanghai office, that as he had made satisfactory arrangements with Mr. Manley to remain with the Company, he did not now want you to come to Shanghai.

We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokio, probably about the end of April, we shall have no further use for your service here.

We cannot say what your recourse will be under your contract, but, as intimated the other day, the writer will be glad to render you such assistance as he can in order to effect a mutually satisfactory settlement,—but before anything can be done in

this connection it will be necessary for you to make some suggestions in the premises.

We remain,

Yours very truly,

DHB/CP. [144]

Defendant's Exhibit No. 8.

May 6, 1919.

A. T. Steele, Esq.,

5, Enokizaka-machi, Akasaka,
Tokio.

Dear Sir:—I shall be obliged if you will kindly furnish me with certified copies of all letters which you have addressed to Mr. Ward, during the time you have been connected with this office, which in any way refer to the business of the office.

Your prompt compliance with this request will no doubt hasten the arbitration of our differences, and as that would no doubt be in keeping with your own ideas I hope you will not delay complying with my request.

I would also be glad to have you state to me in writing whether or not you sent to Mr. Ward a copy of our last auditor's report.

I have again to remind you that you have failed to turn over a number of keys which are urgently required by us. I understand that the desk in our office for which you hold the key contains only your private belongings, but I would call to your attention that this fact does not offer any excuse for your retaining possession of our property. Kindly let us have all of our keys at once.

I enclose herewith an account current showing that you have a debit balance of Yen 541.21, on our books, which we request that you pay in at once. I remain,

Yours very truly,
DHB/McD. [145]

Defendant's Exhibit No. 9.

March 19, 1919.

A. Tilton Steele, Esq.,
American Trading Co.,
Tokio, Japan.

Dear Sir:—With reference to our conversation of a few days ago, we beg to confirm what we told you at that time, to the effect that we had received word from Mr. Burns, agent of our Shanghai office, that as he had made satisfactory arrangements with Mr. Manley to remain with the company he did not now want you to come to Shanghai.

We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokio, probably about the end of April, we shall have no further use for your services here.

We cannot say what your recourse will be under your contract, but, as intimated the other day, the writer will be glad to render you such assistance as he can in order to effect a mutually satisfactory settlement,—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.

We remain,

Yours very truly,
DHB/CP. [146]

Defendant's Exhibit No. 10.

March 19, 1919.

Letter No. 46-F.

L. A. Ward, Esq.,

Vice-president American Trading Co., (Pacific
Coast.)@

San Francisco, Cal.

Dear Mr. Ward: I enclose herewith copy of letter which I have today addressed to Mr. Steele.

You will perhaps not be prepared for the news that Mr. Steele is not going to Shanghai to our office at that port. I presume that when Mr. Burns went through San Francisco this matter was not discussed with you, because Mr. Burns thought at that time that Mr. Steele would replace Mr. Manley after the return of Mr. Boyd to Tokio from his short holiday. In the meantime Mr. Burns has made satisfactory arrangements with Mr. Manley and desires to continue his services with the Company,—and that being the case, he has no position for Mr. Steele.

I had explained the whole situation to Mr. Steele and I think he fully understands the reason for the action which has been taken. I am pleased to say that he has accepted the situation very gracefully indeed and is quite willing to come to a friendly understanding with the American Trading Company.

I have suggested that in view of the fact that his contract was made with your good self, he return to San Francisco in due course and come to a settle-

ment with you, and he has been very agreeable to this suggestion.

I think I am correct in saying that Mr. Steele is not altogether satisfied with life in the Far East, and that he is not sorry that his stay here is not to be prolonged [147] even to the extent of the contract which he entered into. He is, however, desirous of obtaining some kind of a Government appointment in India, and he tells me that you were fully acquainted with his wishes in this respect at the time you entered into negotiations with him on behalf of the American Trading Company. He would like us to render him such assistance as we can to enable him to get such an appointment, and I have told him that we would provide him with such letters of recommendation as we could, but beyond that I cannot see that we can be of any material assistance. However, I hope that you will do anything that you are able to do in his behalf.

I cannot say at this writing just when Mr. Steele will return to San Francisco, but I am expecting that Mr. Boyd will be back here not later than the end of April, and in that case probably Mr. Steele could get away from here sometime during May.

I am giving Mr. Steele a copy of this letter.

I remain,

Very truly yours,

DHB/CP.

Enclosure.

P. S. Since writing the above, Mr. Steele has called my attention to the fact that my remarks

with reference to his not being satisfied with life in the Far East are not exactly in accordance with facts. His proposition is that he is not pleased with life in Japan, but that as far as China is concerned he believes that he would have been entirely satisfied to have completed his contract in that Country. D. H. B. [148]

In the United States Court for China.

A. TILTON STEELE,

Plaintiff,

vs.

AMERICAN TRADING COMPANY,

Defendant.

(Cause No. 798; filed April 20, 1920.)

Decision.

Syllabus.

1.—Contracts: Employment. A contract of employment as “Chief Accountant of our Shanghai office” for three years at a minimum compensation of \$10,000, conditioned upon the employe “doing his work in an efficient and satisfactory way” cannot be terminated by the employer on a ground independent of the “way” in which the accountant did his work.

2.—. —.The measure of damages in an action by the employe for the wrongful termination of such a contract (as distinguished from an action for salary) is the amount he would have received thereunder, viz., \$10,000., less any payments and outside earnings.

3.—.—Onus Probandi. The employer has the burden of proving what other employment the employe might obtain.

4.—.—Exchange. Where such contract is silent as to the rate of exchange, the evidence must show that the minds of the parties met *aliunde* on a specific rate before it can be applied.

5.—Pleading: Immaterial averments are not admitted by a failure to deny and an averment must be clear and unequivocal to support a judgment on the pleadings.

6.—Arbitration and Award: Where the matter submitted is the amount due under two contracts and the arbitrator merely refers one of them to a third party, and leaves proof to be taken elsewhere as regards the other, there is no valid award.

Jernigan, Fessenden & Rose, by Mr. Fessenden, and Rodger & Haskell by Mr. Haskell, for plaintiff.

Fleming, Davies & Bryan, by Mr. Bryan, for defendant.

LOBINGIER, J.:

Plaintiff sues for the breach of a contract of employment evidenced in part by the following instrument (Ex. "A."):

"San Francisco, Cal., May 27, 1918.

Mr. A. Tilton Steele,

Present.

Dear Sir: Confirming the writer's conversations with you during the past few days, we have employed you as follows: —

Position.—Chief Accountant of our Shanghai office, the duties of which office you are to take up

as quickly as possible, proceeding herefrom for Shanghai within about thirty days.

Duration of Employment.—Three years from July 1 next or earlier if the time of your departure from San Francisco for Shanghai hereunder be earlier. Should you not leave San Francisco for Shanghai hereunder prior to July 1, your salary will commence on July 1. [149]

Compensation.—Two Hundred and Fifty (\$250.00) Dollars U. S. Gold per month for the first year and for the second and third year adjustments of salary to be made at the end of the first and second year, as may be mutually agreed; your compensation, however, not to be less than Ten Thousand (\$10,000.00) Dollars for the entire period of three years.

Satisfactory Service.—The undertakings herein contained on our part are all conditioned upon your doing your work in an efficient and satisfactory way.

Transportation to Shanghai.—In addition to salary, as herein provided, we will provide you with first-class transportation to Shanghai.

Bond.—It is a condition of your employment that you give any bond the Company may require, the Company paying the premium thereon.

Yours truly,

AMERICAN TRADING COMPANY.

(Pacific Coast)

LOUIS A. WARD,

Vice President & Manager.

Confirmed and Accepted:—

A. TILTON STEELE.

In its answer defendant alleged that this instrument was executed not by it, but by a distinct corporation, viz., the American Trading Company (Pacific Coast). But at the trial defendant's executive head in Shanghai testified (pp. 16, 28) that plaintiff's employment was authorized by defendant's President. On August 6 following the execution of said instrument, and pursuant to its terms, plaintiff sailed from Seattle for Shanghai but while en route received a radiogram from defendant's Vice President at Yokohama reading:

“This (there?) is probability your being required Tokyo office for few months before going Shanghai. Please be prepared to leave ship in Yokohama. Blake.

AMERICAN TRADING.”

Following an interview at Yokohama defendant's Vice-president wrote plaintiff the following letter, after receiving which, he testifies (pp. 4, 5) he worked at defendant's Tokyo Office until May 3, 1919:

“Tokyo, Aug. 27th, 1918.

A. Tilton Steele, Esq.,

Present,

Dear Sir: We beg to confirm our conversation of yesterday's date with reference to your temporary employment in this Office.

Compensation: The Compensation provided for in your original contract made with Mr. L. A. Ward, Vice-president and Manager of the American Trading Company of the Pacific Coast on May 27th calls for a salary of \$250.00 Gold per month,

or a salary of not less than \$10,000.00 for the three years' period of your contract. We have arranged that you are to receive \$250.00 Gold at exchange 50, which is the equivalent of Yen 500.00 per month together with an additional allowance of Yen 150.00 per month to cover any additional expenses which you may be put to owing to the change in your plans. The two items above mentioned will make a total of Yen 650.00 per month which you will receive while you are in the employ of our Tokyo Office. [150]

Term of Employment: As explained to you, we wish you to remain in Tokyo during the time that Mr. Boyd is absent on holiday which we estimate will be about six months. This time will, of course, apply on your three years' term as mentioned in your original contract.

Travelling Expenses: Any legitimate traveling expenses incurred by you on behalf of the company will be refunded to you.

General: It is understood between us that this temporary arrangement does not prejudice any verbal understanding which you may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

We remain, Dear Sir,

Very truly yours,

AMERICAN TRADING COMPANY.

D. H. BLAKE,

Vice-president.

Nearly seven months later, the same party wrote again as follows:

“Tokyo, March 19, 1919.

A. Tilton Steele, Esq.,
American Trading Co.,
Tokyo.

Dear Sir:

With reference to our conversation of a few days ago, we beg to confirm what we told you at that time, to the effect that we have received word from Mr. Burns, Agent of our Shanghai Office, that as he had made satisfactory arrangements with Mr. Manley to remain with the Company, he did not now want you to come to Shanghai.

We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April, we shall have no further use for your services here.

We cannot say what your recourse will be under your contract, but, as intimated the other day, the writer will be glad to render you such assistance as he can in order to effect a mutually satisfactory settlement,—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.

We remain,

Yours very truly,

AMERICAN TRADING COMPANY.

D. H. BLAKE,

Vice-president.

Plaintiff testifies (pp. 11–13) that he later went to Shanghai and offered by telephone to carry out his contract with defendant but was told not to come and this is confirmed (p. 28) by defendant's

agent in Shanghai. Plaintiff's employment, as we have seen (Ex. "A") was as "Chief Accountant of our Shanghai office" and was "conditioned upon your (his) doing your work in an efficient and satisfactory way." Is it possible to decide that he was unable so to do the work of that particular position when he was given no opportunity to do it?

Plaintiff's counsel contends that

* * * It is established beyond a shadow of a doubt by the evidence, the conduct of defendant, and defendant's pleadings that the defendant not only regarded the letter of August 27, 1918 and the original contract as separate and distinct agreements but acted accordingly even to the extent of denying being a party to the original agreement," and [151] "that evidence of unsatisfactory services under one contract, performed in one country and under certain conditions, is neither competent nor relevant to prove that services to be performed in another country under different conditions, even though for the same company, would be unsatisfactory."

But even if it be conceded, as defendant's counsel urges, that "the letter of August 27 was merely a supplemental agreement to the original contract," can we import into the former all the terms of the latter? For the former was not "conditioned upon" plaintiff's "doing his work in an efficient and satisfactory way," and it contained no clause authorizing defendant to discharge plaintiff within the term of his "temporary employment" which

was “during the time that Mr. Boyd is absent.” (Ex. “C.”) Again, and more important still, can we import into the original contract of employment as “Chief Accountant of our Shanghai office” the condition of “doing his work in an efficient and satisfactory way” as chief accountant in the Tokyo office under a separate, even if supplemental, agreement, so as to justify exclusion from the former for unsatisfactory service in the latter? Such an attempt seems to approach dangerously near the forbidden process of making a new contract for the parties.

But, even were we to do so, we could not enlarge the condition of the original contract that plaintiff should do “his work in an efficient and satisfactory way.” Counsel contends that “the Court has merely to inquire * * * whether or not the defendant was dissatisfied” and that we “cannot decide whether defendant should have been satisfied.” But under a clause like this, which authorizes discharge, not if defendant was “dissatisfied” with plaintiff, but only if the latter failed to do “his work in an efficient and satisfactory way,”

1. “Where the chief thing the parties have had in mind was to effect some definite purpose or end, of the performance of which others could judge just as well as the parties could, and which involved no considerations strictly personal, the stipulation that it should be done to the satisfaction of the party has been generally held not to be controlling.” *Frary vs. Rubber Co.*, 23 Minn. 264, 53 N. W. 1156.

we must, as we read the authorities,² “inquire” and “decide” whether the dismissal was really because of the “way” plaintiff did his “work” or on some other ground.

We find very little in the evidence as to the “way” in which plaintiff did his “work” as Chief Accountant even in Tokyo. Most of the criticisms of him relate to other matters than his actual work as Chief Accountant. The Shanghai agent of the defendant testified (p. 18) that he objected to plaintiff “on account of his personality.” But his “personality” was not a ground for dismissal, even under the original contract, unless it rendered his work as Chief Accountant inefficient and unsatisfactory. And the only reason given plaintiff for his dismissal was that as same agent “had made satisfactory arrangements with Mr. Manley to remain with the Company, he did not now want you to come to Shanghai.” (Ex. D.) Moreover the incident stressed by Mr. Paget occurred after the dismissal (p. 63) and could

2. Louisiana. Hotchkiss vs. Gretna Co., 36 La. Ann. 517.

Maine. Winship vs. Portland, etc. Assn., 78 Me. 571, 7 Atl. 706.

Mississippi. Atlanta Stove Works vs. Hamilton, 83 Miss. 704, 35 So. 763.

Michigan. Jones vs. Transp. Co., 51 Mich. 539, 16 N. W. 893.

New York. Doll vs. Noble, 116 N. Y. 230, 22 N. E. 406, and citations.

Texas. Rhodes Co. vs. Frazier, 55 N. W. 192.

Vermont. Daggett vs. Johnson, 49 Vt. 345.

not have furnished the cause thereof. Certainly the conduct of the parties at the time of the transaction, and not afterward, is the best index to the real ground.

Counsel invokes a written statement (Ex. 2) prepared by defendant's Vice-President for the arbitration proceedings hereafter mentioned. This document is dated May 10, 1919, after plaintiff had been discharged, and it is objected to as not properly in evidence. But we have decided to receive, for what they are worth, all exhibits offered by either party and we shall notice this as the Vice-president's last and most carefully prepared statement of his objections to plaintiff and one which he would hardly have improved upon had he testified in Court.

The criticisms of plaintiff in the statement may be summarized as follows: (1) Desire to change the system of accounting; (2) tardiness in attendance and "disregard of our office rules" (particulars not given); (3) writing letters about the office to the Vice-president of the American Trading Co. (Pacific Coast).

As to the first, plaintiff claims in his testimony (pp. 45 et seq.) that the system of accounting needed improvement. There is no evidence that he was mistaken. On the contrary his proposals appear not to have been unwelcome even up to the time he left the Tokyo Office. On April 12 and again on April 30 he wrote regarding the matter to the Vice-president, the second letter reading in part as follows:
[153]

“Re Improvement in the System of Account & Collection. May I know definitely if the suggestions embodied in my letter to you dated April 12-19 are approved by you, and whether or not it is your desire that I should remain in the Tokyo Office to Co-operate with Messrs. Mauger & Boyd in the proposed changes?”

To this the Vice-president replied on the same date:

“With reference to your letter of the 12th inst., I am keenly interested in your suggestion, but it is quite impossible for me to say at this time whether or not we shall put your suggested scheme into operation.”

Surely there is no suggestion in this that plaintiff's proposals for improvement affected unfavorably the character of his work.

As to the second complaint plaintiff denies (p. 41) the charge that he disregarded office rules and testifies (p. 32):

“On one or two occasions Mr. Blake saw me in the hall leading to my office and he had already come in, I think it was about a quarter of an hour or twenty minutes to nine, and he said ‘well you are late’ and I said ‘yes, but it was on the Company's business.

Q. Now as a matter of fact during the period you served there did you serve the full extent of the office period?

A. More than that. I didn't go to tiffin during the lunch hour of twelve to two. I was the only person in the office during the lunch period.”

Plaintiff's duties as accountant were not like those of a salesman or other employe who must meet the public at certain hours. There is no claim that the time devoted to his work as an accountant was insufficient.

As to the third complaint plaintiff states (pp. 44 et seq.) that he wrote the Vice-president at San Francisco believing him to be the superior of all and that it was to the interest of the defendant company that he should receive the information thus transmitted. In this plaintiff may have been mistaken but we cannot see that what he did was any part of his "work" as chief accountant.

Plaintiff also testifies (pp. 31 et seq.) that these complaints were not made to him by the Vice-president at Tokyo, that "the point of dissatisfaction was never mentioned" by the latter and that the real ground of plaintiff's dismissal was quite different. This is corroborated by the said Vice-president's letter of March 19, 1919, quoted above (p. 3) and by another which he wrote on the same day to the San Francisco Vice-president, reading in part as follows:

"You will perhaps not be prepared for the news that Mr. Steele is not going to Shanghai to our office at that port. [154] I presume that when Mr. Burns went through San Francisco this matter was not discussed with you, because Mr. Burns thought at that time that Mr. Steele would replace Mr. Manley after the return of Mr. Boyd to Tokyo from his short holiday. In the meantime Mr. Burns has made satisfactory arrangements with Mr. Manley and desires to

continue his services with the Company,—and that being the case he has no position for Mr. Steele.” (Ex. 10).

Not a word in this about unsatisfactory or inefficient service. He was writing to another company official, and could speak without reserve, yet the only cause assigned for plaintiff’s dismissal was that the Shanghai office had persuaded another to remain in his place.

Finally in his letter of May 2, 1919 the same Vice-president informs plaintiff

“that in giving up your duties and handing over charge of the Accountant Department to Mr. Boyd, as requested by me, both verbally and in writing, your rights and interests under your original agreement with the Company, or my letter of August 27th, 1918, will not be prejudiced in any way.” (Ex. “G”)

Such was defendant’s position at the time of the dismissal and before the statement of May 10 was prepared. In view of it and the lack of countervailing evidence we are unable to find that such dismissal took place because plaintiff failed to do his work as Chief Accountant in the Tokyo Office “in an efficient and satisfactory way”; or that defendant sought to terminate on that ground his employment under the original contract; or that it was justified in so terminating said contract. It follows that we must find that said contract was wrongfully terminated.

II.

But it is claimed that the question of the character

of plaintiff's work is determined against him on the pleadings by virtue of the failure to deny in his replication the averment of the answer

“That the alleged services rendered by the plaintiff herein to the defendant were neither satisfactory nor efficient, as required in the contract alleged in plaintiff's petition, a copy of which is attached thereto and marked exhibit “A,” and that the said plaintiff in the performance of his alleged duties was inefficient, negligent and insubordinate to his superiors.”

But what were the “alleged services” and “alleged duties” here mentioned? How were they alleged and by whom? The complaint alleges nothing about plaintiff's “duties” or “services.” Neither did the contract (Ex. “A”) require the “services rendered by the plaintiff”—i. e. in Tokio—to be “satisfactory or efficient.” The averment is, therefore, indefinite whereas, to support a judgment, it “must be distinct and unequivocal.”³

Again the only services in issue here are the actual (not alleged) ones which plaintiff rendered in Tokio and the future (tho not alleged) ones which he offered, but was not permitted, to render in Shanghai. None of these can correctly be included in the phrase “alleged services” and the averment regarding them is thus also immaterial. But immaterial allegations are not admitted by failure to deny,⁴ and the only ones which are so admitted are those which are well

3. 23 Cyc. 731 (note 12). [155]

4. 31 Cyc. 209 (note 87).

pleaded.⁵ For when a party bases his claim on a technical rule of pleading, or a technical oversight on the part of his adversary, his own pleadings must bear microscopic scrutiny and nothing therein will be implied or supplied by intendment.

Plaintiff's counsel may have considered that defendant's averment regarding "alleged services" was too vague and uncertain to require a denial. Or they may have relied on the practice heretofore followed in this Court that in the absence of a reply new matter in the answer will be taken as denied.⁶ This is because the old Court Regulations⁷ provide for but one pleading for each party and the Court has not yet found time to frame a different rule. If by this situation plaintiff were misled into his failure to deny, it would be the Court's duty, even now, to permit him to amend by adding such denial;⁸ for the case was tried on the theory that he did not admit that his services were inefficient or unsatisfactory. But we consider such amendment unnecessary, because we could not base a judgment on the averment regarding "alleged services," and the motion for such judgment is overruled.

5. *Id.* (note 81); *Alston vs. Wilson*, 44 Ia. 130, 132; *Moulton vs. Doran*, 10 Minn. 67 (49).

6. Compare the group of code states enumerated in 31 Cyc. 242 (56).

7. Sec. 5.

8. Act of Congress of June 6, 1900, 31 U. S. Stats. at Large Secs. 1, Ch. 786, secs. 92, 97; Alaska Compiled Laws, secs. 924, 929; in force here under the doctrine of *Biddle vs. U. S.*, 156 Fed. 759. [156]

III.

It is also claimed that plaintiff is barred in this action by an award. On May 2, 1919 he wrote defendant's Vice-president:

“It must also be distinctly understood between us, in writing, in accordance with the terms of my understanding with our Ambassador, the Hon'ble Mr. Roland Morris, reached in my conversation with him at the Embassy yesterday, that we are both to agree and to state such agreement in writing to him, assenting to the arbitration of the Hon'ble Mr. Potter, whose award must be considered as binding to both parties in the matter of the main issue involved in the case, viz., the amount of compensation to be paid to me here at the Tokyo office of the company in full settlement of all my claims against the company under the two agreements I have with the company.”

And on the same date the Vice-president replied:

“With reference to the arbitration of our differences, I confirm my previously expressed willingness to acquiesce in the suggestion made by H. E. Ambassador Morris, that the arbitration should be placed in the hands of the Honorable Mr. Potter, who is at present in Tokyo, and that his award should be binding on both parties, and shall be settled in Tokyo.”

Likewise on the same day the parties notified the Ambassador that

“In accordance with your kind suggestion, we, the undersigned agree to the arbitration of our

differences by the Honorable Mr. Potter, and undertake to abide by and put into effect whatever award he makes.”

But the statement of what “our differences” are, and hence the real terms of submission, are found only in the letters exchanged between the parties and the issue there submitted is clearly enough stated in the words italicised above. But the arbitrator, after briefs had been submitted on both sides, expressed

“the opinion that the matter of the three year contract should be referred to Mr. Ward in San Francisco for settlement; second, that Mr. Blake should pay Mr. Steele in full until such time as Mr. Steele can secure first class passage back to San Francisco less any indebtedness that may be proved that Mr. Steele owes Mr. Blake.”

Plaintiff’s counsel deny that this constitutes a valid award because it (1) fails to dispose of the issue submitted and (2) attempts to delegate authority. We see no escape from these objections. The arbitrator did not determine “the amount of compensation to be paid” plaintiff “in full settlement” of all his claims “under the two agreements” nor was the matter “settled in Tokyo.” On the contrary he expressed the opinion that the whole “matter of the three year contract (the principal of “the two agreements”) should be referred to another, “for settlement” elsewhere. He, indeed, expressed the opinion that plaintiff should be paid (presumably under the second contract as the first was to be “referred” to another) “in full” until he could

secure return passage, which should have been a matter of a few days; but such payment was to be "less any indebtedness that may be proved." [157]

How and where was it to be proved? Evidently not before the arbitrator. As to the second, contract then plaintiff was left with the possible alternative—which he ultimately adopted—of resorting to the courts; while as to the first contract he was "referred to Mr. Ward in San Francisco for settlement." Both of these expedients were open to plaintiff before submission and the action of the arbitrator, consequently, left him just where he was before. To say that it disposed of the issue submitted, therefore, is to trifle with language. And if it failed to dispose of that issue it was not a bar to this proceeding. For under the law in force here, which, in the absence of contrary proof, is presumed⁹ to be the same as that of Japan where the arbitration was held,

The award must be such a disposition of the matter submitted that nothing further remains to fix the rights and obligations of the parties, that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties, and that further litigation shall not be necessary in order to adjust the matters submitted.¹⁰

Defendant's counsel contends that the phrase last above quoted from the report of the arbitrator was not a delegation of authority because he

9. See the writer's "Foreign Laws," *Am. & Eng. Encyc. of Law* (2nd ed.) XIII, 1061.

10. *Corpus Juris*, V., 139.

“undoubtedly meant that Steel had no case against the American Trading Co. of Maine and that he should proceed to San Francisco and try to settle the matter with Mr. Ward.”

If that is what he meant he chose an unfortunate mode of expressing it. For the arbitrator's report contains no intimation that he considered plaintiff “had no case against” defendant. If so why was “the matter of the three year contract” (which was with defendant alone) to be “referred * * * for settlement”? Since a “settlement” of that matter was considered necessary there must have been something to settle—i. e. a “case.”

It is conceded that the arbitrator could not delegate his authority to Mr. Ward or any one else.¹¹ But if he did not attempt to do so it was only because his language amounted to nothing more than an expression of opinion or suggestion in which case it was not an award at all.¹² If he did not expressly say “I refer the matter to Mr. Ward” he likewise did not say “I award plaintiff this” and “I reject or dismiss his claim as to that.”

We find no defect in the replication as regards the alleged award. Its averment that the same “is void and of no effect and not binding on plaintiff” seems not only sufficient as a pleading but in accordance with the facts and the law.

IV.

Under his original agreement plaintiff's compen-

11. Id. 142.

12. Lock vs. Vulliamy 5 B. & Ad. 600, 27 E. C. L. 255 (110 Reprint, 912.) [158]

sation was “not to be less than \$10,000, for the entire period of three years.” In his brief (p. 27) he

“admits having received the equivalent of Gold \$2500 on account of the contract which leaves a balance of G. \$7500 which the plaintiff could have earned if he had not been wrongfully discharged.”

The rule established for this jurisdiction in actions for breach of contract is that

“the amount which would have been received if the contract had been kept is the measure of damages if the contract is broken.”¹³

And where, as here, the “cause of action was not for wages but for damages for breach of the contract,”¹⁴ prospective damages—even those to accrue after the trial¹⁵—may be included.

13 *Benjamin vs. Hillard*, 23 How. (U. S.) 149, 16 Law ed. 518 (quoting *Alder vs. Keighly*, 15 M. & W., 117; *Hadley vs. Baxendale*, 9 Exch. 341;) *Pierce vs. R. Co.*, 173 U. S., 143 Law ed. 591. “The amount of the agreed wages may be taken as the measure of damages *prima facie*.” *Saxonia etc. Co. vs. Cook*, 7 Colo. 569, 4 Pac. 1111, quoted with approval in *Alaska etc. Co. vs. Chase*, 128 Fed. 889.

14. *Alaska etc. Co. vs. Chase*, 128 Fed. 886, 889.

15. *American China Development Co. vs. Boyd*, 148 Fed. 268, 368 (on appeal from the Consular Court for the District of Shanghai and very similar to the case at bar) citing *Hochster vs. De la Tour*, 2 El. & Bl. 678; *Rhodes vs. R. Co.*, 49 W. Va. 500, 39 S. E. 209. The first case fixes the law for this jurisdiction regardless of the earlier cases of *Schroeder vs. Trading Co.*, 95 Fed. 296 and *Darst vs. Alkali Works*, 81 Fed. 284, cited by defendant and which limit recovery to date of trial.

Defendant's counsel cites decisions ¹⁶ of certain state Courts to the contention that,

“plaintiff must not only allege but must prove a willingness to perform and also that he has been unable to get other employment.”

But the Court of Appeals, in the principal case¹⁷ already cited, where there was no averment of inability “to get other employment,” has adopted a different rule, quoting a well known commentator who states it as follows:

“The burden of proof is on the defendant to show that the plaintiff might have obtained other employment; for the failure of the plaintiff to obtain other employment does not affect the right of action, but only goes in reduction of damages, and if nothing else is shown, the plaintiff is entitled to recover the contract price upon proving the defendant's violation of the contract, and his own willingness to perform.”¹⁸

We are unable to find that defendant in the case at bar has assumed this burden. Its agent at

16. Kentucky. *Shepherd vs. Gambill*, 96 S. W., 1104; *Lewis Co. vs. Scott*, 95 Ky. 484, 26 S. W. 192. Mississippi. *Hunt vs. Crane*, 33 Miss. 669, holding that where plaintiff “obtains employment, the presumption is, that he gets the best wages he can; because the strong inducement of self-interest would impel him to do so, and the idea is most unreasonable, that he did not act accordingly.” Texas. *Gulf etc. R. Co. vs. Jackson*, 69 S. W. 89.

17 *American China Development Co. vs. Boyd*, 148 Fed. 258. [159]

18. *Sedgwick, Damages*, (8th ed.) 11, sec. 667.

Shanghai states (p. 25) that "it should be easy" for a man of plaintiff's qualifications and experience to obtain a position here. But plaintiff testified (pp. 66 et seq.) that he had advertised in the newspapers and "had applied to over 60 firms here personally." He stated that he could probably obtain a subordinate position as bookkeeper but intimates (p. 68) that to accept it would cause him to lose standing as an accountant which any one familiar with conditions in Shanghai can well understand. We cannot think that a party, whose contract has been broken, is obliged, in order to reduce his adversary's damages, to accept employment which would affect injuriously his own future career. And while, as we have seen, it was not incumbent on plaintiff to prove that he had sufficiently sought other employment we think he has done so even more satisfactorily than did the corresponding party who held the burden of proof in one of the cases which defendant cites and where the court said:

"While the evidence as to appellee's efforts to secure other employment, and as to what portion of the time covered by the contract he was unable to secure other employment, is meager and somewhat unsatisfactory, we cannot say that, in the absence of any contradictory evidence on the part of appellant, it was too indefinite and uncertain to support a finding for any wages due under the contract."¹⁹

The complaint alleges

19. Gulf etc. R. Co. vs. Jackson, 69 S W. 89, 91.
[160]

“That the Defendant Corporation agreed to to pay the Plaintiff the aforesaid Ten Thousand Gold Dollars (\$10,000) at an exchange rate of Fifty-five Gold Cents to the Tael, and Seventy Two Tael Cents to the Dollar Mexican (\$1.00.)”

But in their brief (p. 26) counsel frankly admit that “regarding the question of exchange there is more or less uncertainty” and that in the original contract “nothing was said about exchange.” The chief support of the averment above quoted is that part of plaintiff’s testimony where he relates an interview in San Francisco, after his original agreement was executed, with the Shanghai agent of defendant, as follows:

“I asked Mr. Burns specifically to settle with me at what rate of exchange in taels or Mexican dollars I should be paid my salary, before I left San Francisco.

Q. And what did Mr. Burns reply to that?

A. He said it was the—first I said that I understood that the usual rate of exchange was two Mexican dollars to one gold, and I would not accept anything less than that. Then Mr. Burns said our office does even better than that, our special rate is 55 cents gold to the tael and all our American employees get their salaries on that basis.

Q. Was any memorandum made at that time of that conversation?

A. Then I asked Mr. Burns what that would amount to in Mexican dollars and he turned to a portfolio he carried and brought out a payroll

sheet of the Company's Shanghai office and referred to it, and I happened to have some paper in my hands and he didn't have any loose handy and I handed it to him to figure it out how much it would amount to at the rate of 72 tael cents for one Mexican dollar.

Q. Was there any memorandum made in writing at that time?

A. He figured out what my salary of \$250.00 gold dollars would amount to and it amounted to 632 Mexican dollars.

Q. Answer my question, please.

A. Yes, there was.

Q. Have you got that memorandum?

A. It is among those papers.

Q. You find it please. I hand you Plaintiff's Exhibit "E" and ask if that is the memorandum made at that time.

A. Yes, Mr. Burns own figures. He figured it out and said the amount was—he figured it out that my salary would amount to 632 Mexican dollars."

On the other hand in the agent's version (pp. 17-19) of the same interview he speaks of telling plaintiff

"that the men in our office were carried upon a more or less uniform rate and that when he got to Shanghai he would be treated in a proper way by Mr. Roper, who was acting agent. As I was not in charge of the Shanghai office then, he would have to leave these matters to be adjusted

with Mr. Roper, who, I was quite certain, would make all satisfactory arrangements with him.

Q. Did you hear Mr. Steele state when he was in the witness box that you promised him that he should have a rate of 55 tael cents to the gold dollar?

A. I told him he would be paid upon the same basis as the other men in the office who are under the same arrangements. That I was quite sure that Mr. Roper would treat him exactly the same as I would if I were there.

Q. You never promised him such a rate as he testified you did?

A. No. Otherwise I would have written Shanghai at the time what I had promised."

* * * "Q. Did you ever promise him or agree with him to pay any specified rate of exchange on his contract?

A. I discussed the exchange with him and he said he would prefer a rate of 50 cents Mex. to the Mex. dollar and I told him that would be foolish, to wait until he got out to Shanghai and he would say at once that our rate of exchange, which was about 39, was better. He was asking for 50. [161]

Q. In other words no arrangement was made.

A. No final and definite arrangement was made in San Francisco. It was to be left to Shanghai as it always is unless * * *

* * * "Q. I understood you to say that you did assure Mr. Steele that he would be

treated on the same basis as the other employees?

A. I told him I was sure that Mr. Roper would treat him in all kindness.

Q. You have a fixed rate of exchange for all your employees?

A. Not for all. It is specified in our contracts.

Q. All the same rate?

A. All on a basis of 55 gold cents to the Shanghai dollar, current rate Mexican dollar.

Q. Do all your employees receive that rate?

A. Not all.

We do not find it necessary to resolve the question of veracity between these two witnesses as to the authorship of the memorandum of figures (Ex. "E") mentioned by plaintiff. Regardless of who wrote them the figures throw very little light on the crucial question whether the Shanghai agent did actually assume, in behalf of the defendant company, (even supposing he had such authority), to make the alleged rate of exchange a part of plaintiff's contract and to pledge defendant's liability therefor. We doubt if plaintiff's own testimony, standing alone, shows that he did, or discloses anything more than information given by the agent as to what the salary would be if the alleged rate were agreed upon. To prove a contract for that rate it must appear that the minds of both parties actually met thereon²⁰ and in the light of the whole testimony that seems more than doubtful.

20. Shanghai Tannery Co., Ltd., vs. American Trading Co., U. S. Court for China, No. 466. [162]

It must be remembered in this connection not only that another agent was then in charge at Shanghai but that the one with whom the interview was held opposed (pp. 18, 20) plaintiff's employment. Indeed the latter's counsel in their brief (p. 13) stress this fact as the real ground for plaintiff's dismissal. Is it reasonable to suppose, then, that said agent would voluntarily undertake to supply a feature of plaintiff's contract which he knew had been omitted by his company and which would amount to more than doubling plaintiff's salary?

But the interview did apprise plaintiff of the importance of adding such a clause and he was then still in San Francisco where the contract was made and where it could have been modified had such been the purpose of both parties. Nay, more, when plaintiff reached Japan the second agreement, which he there accepted, specifically fixed the rate of exchange altho if plaintiff's theory of an existing verbal contract were correct that would have been unnecessary except so far as to apply the agreed rate to Japanese currency. We repeat as to plaintiff what we have already said in effect of defendant that Courts cannot make contracts for parties.

The Court finds that plaintiff is entitled to recover as damages for breach of his contract, as found above, the unpaid balance of his guaranteed compensation, to wit the sum of seventy-five hundred dollars (\$7,500) U. S. currency, less the item of fifty dollars (\$50.) Mexican currency, which plaintiff admits (p. 74) having earned meanwhile.

It is accordingly considered and adjudged that plaintiff have and recover from defendant the said sum, less the said item, together with his costs. [163]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Notice of Appeal.

Please take notice that the defendant herein hereby gives notice of appeal from the decision and judgment of the Court filed in the above-entitled matter on April 20, 1920.

FLEMING, DAVIES & BRYAN,

By R. T. BRYAN, Jr.,

Attorneys for the Defendant.

Shanghai, China,

April 21, 1920.

To Messrs. Jernigan, Fessenden & Rose, and Messrs. Rodger & Haskell.

Filed at Shanghai, China, April 21, 1920. James P. Connolly, Clerk. [164]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Motion for Extension of Time to Perfect Appeal.

Now comes the defendant through its attorneys, Messrs. Fleming, Davies & Bryan, and moves this Honorable Court for an extension of fourteen days in which to perfect its appeal.

(Sgd.) FLEMING, DAVIES & BRYAN,
Attorneys for Defendant.

Filed at Shanghai, China, May 22, 1920. James
P. Connolly, Clerk. [165]

In the United States Court for China.

Cause No.—.

Civil No.—.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

**Order Extending Time to October 15, 1920, to File
Record and Docket Cause.**

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Circuit Court of Appeals of the Ninth Judicial Circuit, pursuant to the writ of error sued out, is extended until the 15th day of October, 1920.

CHARLES S. LOBINGIER,

Judge of the United States Court for China.

Filed at Shanghai, China, 1920.—————Clerk.

[166]

In the United States Circuit Court for China.
Cause No. 798.

Civil 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Bill of Exceptions.

Be it remembered that on January 14, 1920, the above-entitled cause came on for hearing before the Honorable Chas. S. Lobingier, Judge of the United States Court for China. The plaintiff appearing by Messrs. Jernigan, Fessenden & Rose and Rodger & Haskell, his counsel, and the defendant appearing by Messrs. Fleming, Davies & Bryan, its counsel, and the following proceedings took place: Defendant offered in support of its motion, filed the

day previous, for a continuance in order to take the deposition of one D. H. Blake, an affidavit by one W. A. Burns, filed with said motion. After argument, the following order was, by agreement of counsel for both parties, announced in open court and later on the same day entered of record:

“This cause comes on for hearing on defendant’s motion to take deposition on commission:

On consideration whereof, plaintiff’s counsel having agreed in open Court to waive objections to the letters written by the proposed witness and to the testimony of the affiant in support of said motion as to conversations with said witness regarding the subject matter of said proposed testimony, said waiver being restricted to such objections as relate only to the secondary character of said evidence;

The said motion is accordingly overruled and by consent of both parties this cause is set for trial on Friday, January 23, at 9:30 A. M.”

On the day last above written the cause again came on for hearing, counsel for both parties being present, whereupon the [167] trial began and the following witnesses were called and examined, after being duly sworn:

Testimony of Mr. A. T. Steele, for Plaintiff.

(Questions by Mr. HASKELL.)

Direct Examination.

Q. What is your name?

A. Arthur Tilton Steele.

Q. Your nationality? A. American.

(Testimony of A. T. Steele.)

Q. Your age? A. 47.

Q. What is your business, Mr. Steele?

A. At the present time?

Q. Well, what is your business profession?

A. Accountant.

Q. Have you any business at the present time?

A. No, sir.

Q. I will hand you this document and ask you to tell the Court what it is.

Plaintiff's Exhibit "A" offered and received in evidence. Handing witness Exhibit "A."

A. This was an agreement in writing that was executed between Mr. Louis A. Ward, Vice-president and Manager of The American Trading Company, San Francisco, and myself.

Q. Now, then, this document is signed by Louis A. Ward, American Trading Company, Pacific Coast, is it not?

A. Yes, sir; and I accepted it.

Q. Now, do you know whether or not the American Trading Company, Pacific Coast, was authorized by the American Trading Company, the defendant company, to enter into this contract?

A. Yes. [168—2]

Q. How do you know that?

Objection by Mr. Bryan.

Objection overruled. Exception noted.

A. A few days before the signing of the agreement, Mr. Ward showed me a telegram which was signed by Sutcliff, to the effect that—

Mr. BRYAN.—I object.

(Testimony of A. T. Steele.)

Ruling reserved; if the evidence proves to be improper it will not be considered.

First Exception.

Exception as to manner of ruling and to admission of the evidence.

Q. You say you saw a telegram, where did you see [169—3] that telegram?

A. It was in the private office of Mr. Louis A. Ward, Vice-president of the American Trading Company.

Q. At what place? A. San Francisco.

Q. Do you know where that telegram is at the present time?

A. I think it is in the office of Mr. Ward.

Q. Are you familiar with the customs and practice of the American Trading Company?

A. Am I what?

Q. Familiar with the customs and practice of filing?

A. It is probably in the custody of Miss Versalovitch, private secretary to Mr. Louis A. Ward.

Q. Can you tell the Court the contents of that telegram?

Objection by Mr. Bryan.

A. Engage Steele as chief accountant Shanghai office subject to ten thousand dollars gold bond and his credentials being found entirely satisfactory. Sutcliffe.

Q. Now, do you know what Sutcliff was?

A. Sutcliff, Mr. Ward informed me—

Mr. BRYAN.—I object to any conversations had

(Testimony of A. T. Steele.)

by the plaintiff with Mr. Ward.

The COURT.—Objection overruled.

Second Exception.

To which ruling of the Court the defendant then and there excepted.

A. I know who Mr. Sutcliff is now?

Q. Who is he?

A. He is the Vice-president of the American Trading Company of New York, and executive head of the far eastern division of that company. [170—4]

Q. Referring to that Company, do you mean the defendant company?

A. The American Trading Company, New York.

Q. Now, after you entered into the contract, when did you start in the performance of the terms of that contract?

A. When did I start?

Q. Yes, under the terms of the contract, when did you leave San Francisco— Well, I might ask that over, when did you leave San Francisco?

A. On the 6th of August, 1918.

Q. And you proceeded to what place?

A. To Shanghai.

Q. To Shanghai? A. Yes.

Q. Did you proceed direct to Shanghai?

A. To Seattle first, and from Seattle to Shanghai.

Q. Did you get to Shanghai? A. No.

Q. Why?

A. About the 19th of August, 1918, I received a wireless on board the “Kashima Maru” while I was on the way, signed by Blake, to the effect that

(Testimony of A. T. Steele.)

there was a probability of my being needed in the Tokyo office and requesting me to stop over at Yokohama and see him at the Tokyo office of the Company. This is the wireless I received on board the "Kashima Maru."

Q. (Handing witness Plaintiff's Exhibit "B.") This is the telegram you received?

A. This is the wireless I received.

Plaintiff's Exhibit "B" received in evidence.

Q. Did you stop off in Japan? [171—5]

A. I did.

Q. And what did you do then?

A. I went to the Yokohama office and Mr. Bear, the branch manager let me have a boy to guide me to the Tokyo office of the company.

Q. And were you employed at that office?

A. I was.

Q. Did you have any memorandum regarding your employment there? A. Yes, an agreement.

Q. Is this the agreement? (Handing witness Plaintiff's Exhibit "C.")

A. Yes, sir; this is the letter—the agreement that was executed between Mr. D. H. Blake, Vice-president and General Manager of the Far East for the American Trading Company, and myself.

Plaintiff's Exhibit "C" offered in evidence.

Mr. BRYAN.—I object on the ground that this exhibit is irrelevant and immaterial to the case.

The COURT.—Objection overruled.

Third Exception.

To which ruling of the Court the defendant then and there excepted.

(Testimony of A. T. Steele.)

Q. Now, in accordance with that agreement, did you go to work for the American Trading Company in Tokyo? A. Yes, sir.

Q. And how long did you work there?

A. From the date of that agreement, August 27, 1918, to the time I handed over charge to the man who was replaced, Mr. Boyd, on May 3d, 1919, when I completed handing over charge to Mr. Boyd, whose position I occupied during that time. [172—6]

Q. Now, why were your services terminated at that time?

A. You mean my services in the Tokyo office?

Q. Your services with the defendant company.

A. They were terminated by my handing over charge to Mr. Boyd, whose position I was occupying *pro tem*.

Q. Yes, but why did you hand over the position to Mr. Boyd?

A. Because that was according to the terms of the agreement I had with Mr. Blake. z

Q. Did you then proceed to Shanghai as under your original agreement? A. No.

Q. Why not?

A. Because Mr. Blake advised me by letter on the 19th of March, I think, that Mr. Burns, the Shanghai agent, had made arrangements with Mr. Manley to remain in the employ of the company and he did not want me to come to Shanghai. Mr. Burns did not want me to come to Shanghai.

Q. Were you ready and willing, and did you want to come to Shanghai and take up that employment?

A. Yes, sir.

(Testimony of A. T. Steele.)

Mr. BRYAN.—I object.

The COURT.—Objection overruled.

Fourth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. I hand you Plaintiff's Exhibit "D," and ask if [173—7] that is the letter you referred to in answer to my last question.

A. Yes, sir. That is the letter that gave me the intimation that Mr. Burns had made arrangements to retain Mr. Manley and he didn't want me to proceed to Shanghai. Yes, sir, that is the letter.

Q. Now, after receiving that letter, what did you do?

A. I discussed the matter of my agreement with Mr. Blake.

Q. And was there anything done in regard to that?

A. He wrote a letter to Mr. Ward about it.

Q. Now, coming back to San Francisco again. Before the time you left San Francisco for the Orient, did you meet Mr. Burns of the defendant company? A. Yes, sir.

Q. Where did you meet him?

A. In the office of the American Trading Company, San Francisco.

Q. Did you have any conversation with him?

A. Yes.

Q. About what date was that?

A. I cannot recall the exact date. It was about the last week in July, 1918.

(Testimony of A. T. Steele.)

Q. Who was present at that time?

A. Mr. Ward was present at the first interview.

Q. And what was the substance of the conversation?

A. Mr. Burns said he had talked with Mr. Ward about my employment at the Shanghai office of the company as chief accountant and it was all right, he was glad an American accountant was going to replace Mr. Manley, a Britisher.

Q. Was that all? [174—8]

A. That's all, I think.

Q. Did you have any other conversation with Mr. Burns about that time?

A. Yes, I think it was that afternoon.

Q. At what place?

A. At the same,—in the room adjoining Mr. Ward's private office.

Q. And who was present at that time?

A. Nobody was present except Mr. Burns and myself.

Q. What was the substance of that conversation?

A. We discussed my duties as chief accountant Shanghai office and I told Mr. Burns that nobody in the office knew at exactly what rate of exchange I would get my salary, and I wanted that settled before I left.

Mr. BRYAN.—I object.

The COURT.—Objection overruled.

Fifth Exception.

To which ruling of the Court the defendant then and there excepted.

(Testimony of A. T. Steele.)

Q. Was there anything more said at that time?

A. Yes, I asked Mr. Burns specifically to settle with me at what rate of exchange in taels or Mexican dollars I should be paid my salary, before I left San Francisco.

Q. And what did Mr. Burns reply to that?

A. He said it was the—first I said that I understood that the usual rate of exchange was two Mexican dollars to one gold, and I would not accept anything less than that. Then Mr. Burns said our office does even better than that; our special rate is 55 cents gold to the tael and all our American employees get their salaries on that basis.

Q. Was any memorandum made at that time of that conversation? [175—9]

A. Then I asked Mr. Burns what that would amount to in Mexican dollars, and he turned to a portfolio he carried and brought out a payroll sheet of the Company's Shanghai office and referred to it, and I happened to have some paper in my hands and he didn't have any loose sheets handy and I handed it to him to figure it out how much it would amount to at the rate of 72 taels cents for one Mexican dollar.

Q. Was there any memorandum made in writing at that time?

A. He figured out what my salary of \$250.00 gold dollars would amount to and it amounted to 632 Mexican dollars.

Q. Answer my question, please.

A. Yes, there was.

(Testimony of A. T. Steele.)

Q. Have you got that memorandum?

A. It is among those papers.

Q. You find it, please. I hand you Plaintiff's Exhibit "E" and ask if that is the memorandum made at that time.

A. Yes, Mr. Burns' own figures. He figured it out and said the amount was—he figured it out that my salary would amount to 632 Mexican dollars.

Q. And whose writing is that?

A. Mr. Burns'. Mr. Burns figured it out himself in pencil.

Q. Did you see him?

A. Yes, it was right there at that interview. Exhibit "E" offered in evidence.

Q. In accordance with the terms of your contract with the defendant company you were to receive a salary of not less than 250 gold dollars a month. For how many months during the term of this agreement did you receive that salary?

A. I received that salary for nine months in Tokyo, at the [176—10] rate of 500 yen per month. Two yen to one gold dollar.

Q. And—

A. I was given an extra allowance of \$150.00 a month as a compensation for the difference in exchange between 632 Mexican dollars, and I pointed out to Mr. Blake that my salary would be 632 Mexican dollars and he said he could not pay me more than 650 because Mr. Boyd, chief accountant [177—11] of the Tokyo office was getting that and that was the most he could pay me, and I accepted it.

(Testimony of A. T. Steele.)

Q. Then your statement is that the defendant company paid you only nine months' salary in accordance with the terms of this agreement.

A. And I had received \$250 in San Francisco for travelling expenses.

Q. Was that to be applied to your salary?

A. I finally agreed with Mr. Blake, about the 24th of December that that was to apply to my salary for the month of July.

Q. Then you were paid for ten months?

A. Ten months.

Q. Have you demanded payment for the balance of the term of your contract? A. Yes.

Q. Have you received anything on that account?

A. Not a cent.

Q. Are you employed at the present time?

A. I am not exactly employed, but I am trying to get employment as a public accountant here.

Q. You say you are not exactly employed—just what do you mean?

A. I mean I am not in any regular employment.

Q. Are you making any money?

A. So far I have not earned anything, but I have prospects.

Q. That is all.

Cross-examination.

(Questions by Mr. BRYAN.)

Q. Now, Mr. Steele, how long were you in Japan?

A. I was in Japan from August 27, 1918, down to [178—12] August 7, 1919.

Q. How long were you in Japan after you were

(Testimony of A. T. Steele.)

discharged, as you say, by a letter on March 17th?

A. From March 17,—from March 19—do you mean from the date of that letter?

Q. Yes. A. March 19 to August 7.

Q. Now, when did you leave the employment of the American Trading Company?

A. I handed over charge on the 3d day of May, 1919, to Mr. Boyd.

Q. Now, from the 3d of May to August 7th, what were you doing?

A. I was waiting for advice from San Francisco in compliance with Mr. Ward's instructions.

Q. Did you endeavor to obtain any other employment? A. I certainly did.

Q. Who did you endeavor to obtain it from?

Q. From a number of people there.

Q. Who?

A. The Mitsui Company, Mitsui Busan Kaisha, in some capacity suitable for a foreigner.

Q. Why didn't anything come out of this application? Did anything come out of this application?

A. No.

Q. Did they offer you anything? A. No.

Q. Not a thing?

A. No, I could not get any employment in Tokyo, that is why I came here.

Q. Did you go anywhere else?

A. I called at a number of places.

Q. Well, what other places did you call besides the [179—13] Mitsui Busan Kaisha?

A. I called at the Standard Oil Company, in fact

(Testimony of A. T. Steele.)

I made a written application to the Standard Oil Company which I think I have among my papers.

Q. Did you call on anyone else?

A. I called on the Horne Company.

Q. Alright, anyone else?

A. F. W. Horne, I think it was, yes, and—

Q. You have had a good deal of experience at accounting haven't you? A. Yes.

Q. You took the Cambridge examination in India between 1886 and 1890, didn't you? A. Yes.

Q. You were Junior Assistant in Calcutta for about a year? A. Yes.

Q. Then you were in the marine insurance business? A. Yes.

Q. You were the manager for a purchasing agency for hides and skins in Bengal from 1893 to 1902?

A. I was doing my own business, yes, as manager. I was doing my own business.

Q. Then you were in the business of public accounting from 1904 to 1908?

A. In Los Angeles, yes.

Q. Then you were the manager of a public accounting company for awhile, weren't you?

A. From 1909 to 1918.

Q. So you have had a vast amount of experience in accounting and other business matters?

A. Yes.

Q. And yet you were in Tokyo from May 3d to August [180—14] 7, and unable to obtain employment.

(Testimony of A. T. Steele.)

A. Yes, for the reason that Mr. Blake didn't help me at all. On the contrary used his influence against me.

Q. Now how long have you been in Shanghai?

A. I have been in Shanghai since about the 14th of August.

Q. What have you been doing all that time?

A. Oh, I have been writing for the papers and went around to see if I could get anything to do.

Q. Have you made application for a position in any case in Shanghai?

A. I have applied personally, yes.

Q. And yet you have been unable to get any other employment?

A. Yes, I presume Mr. Burns has already helped in that direction, because I had to refer to the American Trading Company.

Q. Now did you ever go to the American Trading Company after you came to Shanghai and offer to work for them?

A. I telephoned over to Mr. Burns and he told me not to come.

Q. Did you offer to carry out your contract?

A. I certainly did.

Q. When did you telephone?

A. About the second or third day after I arrived here.

Q. You are absolutely sure about that?

A. I am absolutely sure and Mr. Burns answered the telephone.

Q. What was the date that you telephoned him?

(Testimony of A. T. Steele.)

A. It must have been about the 18th of August, I guess. [181—15]

Q. How long was that after you arrived in Shanghai?

A. Oh, three or four days.

Q. You didn't telephone then when you first arrived? A. No, because I had my suit here.

Q. Oh, you filed suit then before you informed him, is that it? A. Why surely.

Q. You never offered then to enter into the employment of the American Trading Company of Shanghai until after you filed suit?

A. No, sir, I wrote Mr. Burns two letters. I have copies of those two letters.

Q. What are the dates of those two letters?

A. I think—I don't recall. I think it was February. Some date in February. May I refer to those copies?

Q. That is while you were at the Tokyo office?

A. Yes.

Q. Well, you never offered to work at the Shanghai office after you arrived in Shanghai until after you instituted suit? A. Yes I did.

Q. When? A. In Tokyo.

Q. You never made an offer in Shanghai?

A. No.

Q. You never offered to go to the office and work?

A. I already filed suit, on July 2d. I arrived here August 2.

Q. The first thing you did in Shanghai was to file suit.

(Testimony of A. T. Steele.)

A. The suit had been filed by Mr. Haskell while I was in Tokyo. [182—16]

Q. You never offered in any sense or in any manner to carry out this contract with the Shanghai office?

A. I did. I wrote two letters to Mr. Burns.

Q. You never went to the office here and offered to start work?

A. Because Mr. Burns told me not to come. I telephoned to him.

Q. After the suit was started. A. Yes.

Q. Now when did you have this conversation with Mr. Burns about the exchange?

A. About the last week in July, 1918.

Q. Who was present?

A. At the second interview? Nobody but Mr. Burns and I.

Q. At the first? A. Mr. Ward.

Q. Where was this interview held?

A. In the private office of Mr. Ward.

Q. Where was the second one held?

A. In the room adjoining Mr. Ward's. I think it was sort of a consultation room.

Q. Now where was this second interview held?

A. In the room adjoining Mr. Ward's private office.

Q. Are you absolutely sure that those are Mr. Burn's own figures? (Referring to Plaintiff's Exhibit "E.")

A. He figured it out, yes.

Q. Suppose Mr. Burns says these are not his fig-

(Testimony of A. T. Steele.)

ures and he never wrote it?

A. I could only say that he was prevaricating.

Q. Are you absolutely sure about it? [183—17]

A. I am absolutely sure about it.

Q. Now I put it to you that what Mr. Burns told you was that the business, the arrangement of exchange would be made after you arrived at Shanghai? A. Yes, sir.

Q. I put it to you that no arrangement was made at that time? A. No, sir.

Q. And I put it to you he never made any arrangement about exchange with you?

A. It is in our—

Q. You deny that any such thing was settled?

A. Absolutely I would not have left San Francisco had it not been settled.

Testimony of Mr. Burns, for Defendant.

Direct Examination.

(Questions by Mr. FESSENDEN.)

Q. Your full name?

A. William Andrew Burns.

Q. Nationality? A. American.

Q. Age? A. 48.

Q. Present occupation?

A. Agent, the American Trading Company, Shanghai.

Q. Are you the Executive head of the American Trading Company Shanghai? A. I am.

Q. How long have you occupied that position?

A. Four years, barring six months leave at home.

(Testimony of Mr. Burns.)

Q. Now in your capacity as agent of the American Trading Company here you have done more or less [184—18] business with the American Trading Company of the Pacific Coast? A. Yes.

Q. Although that Company is under a different charter than the American Trading Company here, these two companies are closely allied are they not?

A. Yes.

Q. And is it not a fact that San Francisco, or the American Trading Company of the Pacific Coast, are your general business agents there? You do all your business in San Francisco through them?

A. Not entirely, no, we trade with others on the Pacific Coast.

Q. No, but they are your general representatives there of your head office?

A. No, no more than we are here for them. They trade with other firms here and we trade largely with other firms on the Pacific Coast.

Q. It is correct, is it not, that the American Trading Company Pacific Coast has no office under that name here? A. Yes.

Q. Nor any here else in the Far East?

A. Not that I know of.

Q. Now you were in San Francisco the latter part of July, 1918? A. Yes.

And while you were there you had certain discussions with Mr. Steele about his coming to work in your office here? I don't want to know at this moment what they were, but if you [185—19] had a discussion with him.

(Testimony of Mr. Burns.)

A. Mr. Ward wanted me to meet him before he left for Seattle.

Q. And you did meet him? A. Yes.

Q. And you did discuss the duties—

A. Discussed that he should not come here as chief accountant.

Q. But he was coming to work in your office here?

A. Yes.

Q. Now was your position—you had some instructions, or some information that this man, Mr. Steele, was coming to work in your office at Sanghai?

A. Yes. The information came through Tokyo just as I was leaving for America.

Q. And am I correct to assume that it came from Mr. Blake? A. Mr. Blake.

Q. And I am also correct in that Mr. Blake was Vice-president and General Manager of the American Trading Company of the Far East?

A. Not now, he was then, yes.

Q. You have put in a sworn statement that that contract was not signed by any duly authorized agent of your company. Can you tell me who had authority to send Mr. Steele to work in the Shanghai office of the defendant company? By whose authority was he sent here?

A. I haven't gone into by whose authority he was sent here.

He was sent here against my wishes, entirely without any authorization from this office.

Q. Now Mr. Burns, you have been associated with [186—20] the American Trading Company for

(Testimony of Mr. Burns.)

some years in an executive capacity. Can't you tell me by whose authority Mr. Steele was started to Shanghai?

A. Well I assume from the telegram in evidence here that Mr. Sutcliff must have done it.

Q. And Mr. Sutcliff at that time was Vice-president of the defendant company? A. Yes.

Q. Now you proceeded to your head office, after that, to New York? A. Yes.

Q. Did you have—did you take up with any official of your company in New York the question of Mr. Steele coming to Shanghai?

A. Yes, with Mr. Moss. I raised the question of why men were employed to come out here at a time when I was to be away and would have no means of placing them properly in the staff.

Q. Am I correct to assume that Mr. Moss was President of the defendant company? A. Yes.

Q. And I am correct to assume that Mr. Steele was sent here with the knowledge and consent of the President of the defendant company?

A. It would appear so.

Q. Do you know as a matter of fact whether Mr. Ward had instructions from New York to employ Mr. Steele? A. This telegram—

Q. I don't care anything about the telegram—when you were in New York yourself? You are an executive. [187—21]

A. Yes, when I was in New York Mr. Moss told me not being able to get a man in New York, he consulted with Mr. Ward.

(Testimony of Mr. Burns.)

Q. Were the transportation expenses of Mr. Steele from San Francisco to Shanghai charged up by the San Francisco office to the Shanghai office?

A. They were and were carried on our books, and a cash advance made to Mr. Steele was transferred to Tokyo and the travelling expenses were carried out on our books.

Cross-examination.

(Questions by Mr. Bryan.)

Q. Now, Mr. Burns, you stated that you had some conversation with Mr. Steele, while in San Francisco, will you please state the substance of that conversation?

A. Yes, I met Mr. Steele at the instance of Mr. Ward. He wanted me to meet him before he left for Seattle and then Mr. Ward wanted me to discuss matters with him and we met in the afternoon in the consulting room and discussed generally that his going out while I was home on leave would mean a re-adjustment of the conditions, that he could not go as chief accountant but must go as assistant if he was to come into the office. He then asked me about the basis of exchange and I told him that the men in our office were carried upon a more or less uniform rate and that when he got to Shanghai he would be treated in a proper way by Mr. Roper, who was acting agent. As I was not in charge of the Shanghai office then, he would have to leave these matters to be adjusted with Mr. Roper, whom, I was quite certain, would

(Testimony of Mr. Burns.)

make [188—22] all satisfactory arrangements with him.

Q. Did you hear Mr. Steele state when he was in the witness-box that you promised him that he should have a rate of 55 tael cents to the gold dollar?

A. I told him he would be paid upon the same basis as the other men in the office who are under the same arrangements. That I was quite sure that Mr. Roper would treat him exactly the same as I would if I were there.

Q. You never promised him such a rate as he testified you did?

A. No. Otherwise I would have written Shanghai at the time what I had promised.

Q. Now, did you ever see plaintiff's Exhibit "E" before to-day? A. No.

Q. Are those your figures?

A. They are not.

Q. You don't know whose figures they are?

A. I do not.

Q. But they are not yours?

A. They are not mine.

Q. Did you ever give Mr. Steele any sort of a memorandum containing figures regarding exchange? A. No.

Q. Did you ever promise him or agree with him to pay him any specified rate of exchange on his contract?

A. I discussed the exchange with him and he said he would prefer a rate of 50 cents Mex. to the

(Testimony of Mr. Burns.)

Mex. dollar and I told him that would be foolish, [189—23] to wait until he got out to Shanghai and he would say at once that our rate of exchange, which was about 39, was better. He was asking for 50.

Q. In other words no arrangement was made?

A. No final and definite arrangement was made in San Francisco. It was to be left to Shanghai as it always is unless—

Q. Now, you stated that you objected to Mr. Steele's coming out here?

A. I objected, to Mr. Ward, after meeting him.

Q. For what reason?

A. On account of his personality.

Q. Why did you object to Mr. Steele's personality?

Q. Mr. Burns, you stated that there were certain items on the books that had been transferred to the Tokyo office. Why were those items transferred to the Tokyo office?

A. For instance when he was taken on as Mr. Boyd's successor,—the item of cash which was taken over—there was an item of cash given to him personally there and was charged to the Tokyo office and they collected from his salaries there.

Redirect Examination.

(Questions by Mr. FESSENDEN.)

Q. I understood you to say that you did assure [190—24] Mr. Steele that he would be treated on the same basis as the other employees?

(Testimony of Mr. Burns.)

A. I told him I was sure that Mr. Roper would treat him in all kindness.

Q. You have a fixed rate of exchange for all your employees?

A. Not for all. It is specified in our contracts.

Q. All the same rate?

A. All on a basis of 55 gold cents to the Shanghai dollar, current rate Mexican dollar.

Q. Do all your employees receive that rate?

A. Not all.

Motion.—Mr. BRYAN.—I move for judgment on the pleadings on the ground that the plaintiff has failed to deny allegation 10 of defendant's amended answer, thereby having admitted that the services of the plaintiff were unsatisfactory.

The COURT.—Ruling reserved. If the evidence proves to be improper it will not be considered.

Sixth Exception.

Exception as to manner of ruling i. e., ruling reserved and provisional exception in case of motion being overruled. Defendant's counsel by putting on evidence in defense does not waive any rights that he may have by failure of plaintiff to deny certain allegations of new matter made in defendant's answer. This is made without objection.

(Examined by Mr. BRYAN.)

Q. Now, Mr. Burns, when did you first meet Mr. Steele? A. In San Francisco.

Q. When was this?

A. In July, 1918. [191—25]

(Testimony of Mr. Burns.)

Q. Previous to that time had you informed, or requested anyone in connection with the American Trading Company to obtain an accountant for you? A. Yes.

Q. Whom had you requested?

A. Our New York office.

Q. Now, was there any understanding as to whether or not they should inform you or write you or cable you before employing any such man?

Mr. FESSENDEN.—I object on account of the evidence being irrelevant and immaterial.

The COURT.—Overruled.

A. Both the president and the treasurer of the Company had written me that before employing any man they would cable fully. At that time we were in need of a sub-agent and an accountant, or assistant accountant.

Q. Now, was this understanding carried out in this particular case? A. No.

Q. Were you informed before Mr. Steele was employed? A. No.

Q. Did you receive any cablegram or letter regarding his employment before he was employed?

A. No.

Q. When was the first time that you knew that he had been employed?

A. A telegram from Mr. Blake.

Q. Now, when you first saw Mr. Steele did you approve of him? A. No.

Q. Why didn't you approve of him?

A. I stated to Mr. Ward after my conversation

(Testimony of Mr. Burns.)

with [192—26] Mr. Steele that I thought a mistake had been made, as Mr. Ward told me that Mr. Steele was born of Indian and American parentage in India, and that whatever our feelings might be in the matter, that there was strong prejudice against Eurasians in China and that as chief accountant in our office he would find it very difficult to deal with these objections in China.

Q. You were merely considering the unfortunate position that people like him were placed in Shanghai? A. Yes.

Q. You had no prejudice against him personally?

A. None whatsoever at that time.

Q. It is a fact, isn't it, that in Shanghai people in a position like that Mr. Steele was to occupy, would have to consult with Managers of the Banks and with other Managers of other companies?

A. Yes, especially the managers of Banks.

Q. And where a man has to do a thing of that sort he has to be a man that has some social standing in that community?

Objection by Mr. Fessenden. Sustained.

Q. Did you have any conversation with Mr. Blake relative to the manner in which Mr. Steele rendered his services in Tokyo? A. Yes.

Q. State to the court in substance what those conversations were.

Mr. FESSENDEN.—I object on the ground that the evidence is hearsay.

The COURT.—Overruled. This evidence is ad-

(Testimony of Mr. Burns.)

missible under the order of January 14th, 1920.
[193—27]

Q. Will you state the substance of your conversation with Mr. Blake regarding the services rendered by Mr. Steele at the Tokyo office?

A. When I arrived at Yokohama on my way back to Shanghai after a furlough, Mr. Blake spoke to me about Mr. Steele and said his services had been most unsatisfactory. That he had been very dilatory, came to the office at 9-30, 10-00, etc., and when Mr. Blake spoke to him, told him, if he didn't mend his ways he had better go back to San Francisco. Said he was a great disturber in the office, that he objected to methods laid down by his superiors, that he had taken on writing for the newspapers and had written articles which, if traced back to an employee of the American Trading Company, might injure its business, and that, all in all, he would be a very unsatisfactory man for me to accept for Shanghai, and I told him that under these circumstances that I wished that he would make an arrangement with Mr. Steele to cancel any arrangements that might have been made to come to Shanghai, and that if there was any expense attached thereto that, while I didn't consider it my business, the Shanghai office would most willingly stand it rather than have Mr. Steele come on to the Shanghai office.

Q. And the reasons you have stated for not wanting Mr. Steele were brought about on account of what Mr. Blake told you? A. Yes.

Q. And did you receive any correspondence or any

(Testimony of Mr. Burns.)

[194—28] letters from Mr. Blake regarding the unsatisfactoriness or inefficiency rendered by Mr. Steele?

A. I did eventually receive a letter from Mr. Blake enclosing all correspondence with Mr. Steele and the arbitrator's award and the decision of the arbitrator regarding this matter.

(Defendant's Exhibit 1 received in evidence.)

(Handing witness Defendant's Exhibit 2.) Received in evidence.

Q. What is this letter?

A. An enclosure received from Mr. Blake in a letter which has been submitted to the court, being Mr. Blake's brief to Mr. Potter in the arbitration arranged between Mr. Steele and the American Trading Company of Tokyo.

Q. Did you write to Mr. Blake and ask him for the documents and papers in the Steele matter?

A. I did.

Q. And as a result of that letter you received a letter dated June 10th, 1919. A. Yes.

Q. And in that letter this was enclosed?

A. Yes. He stated in that letter that he was handing me all of these papers covering the entire case and waiting the decision of the arbitrator, which he sent with it.

(Handing witness Defendant's Exhibit No. 3.)

Q. What is this, Mr. Burns?

A. A letter from Mr. Steele to Mr. Blake, dated March 19, Tokyo.

(Handing witness Defendant's Exhibit No. 4.)

(Testimony of Mr. Burns.)

Q. What is that, Mr. Burns?

A. The decision of Mr. Potter, the arbitrator, in the case of Steele vs. Blake. [195—29.]

Q. Was that enclosed in the letter of June 10th?

A. Yes, it is specifically mentioned in that letter.

Q. Did you write to Mr. Blake asking for the papers in the Steele matter? A. Yes.

Q. And as a result of that letter you received a letter of June 10th, enclosing—including enclosures, one of which is this? A. Yes.

Q. (Handing witness Defendant's Exhibit No. 5.) What is this, Mr. Burns?

A. A letter written by Steele to Ward.

Q. Was that included in the letter of June 10th?

A. Yes.

Q. The letter of June 10th was an answer to a letter that you wrote requesting Mr. Blake to send you all the papers in the Steele matter?

A. Yes.

Q. And this was enclosed in that letter?

A. Yes.

(Handing witness Defendant's Exhibit No. 6.)

Q. What is this, Mr. Burns?

A. Another letter written by Steele to Ward, dated April 17.

Q. Was that enclosed in the letter of June 10th?

A. Yes.

Q. And the letter of June 10th was in answer to a request for all papers in the Steele matter?

A. Yes.

(Testimony of Mr. Burns.)

Q. And this was enclosed in the letter of June 10th? A. Yes.

(Handing witness Defendant's Exhibit No. 7.)

Q. What is this, Mr. Burns? [196—30]

A. A letter from Mr. Steele dated March 19th.

Q. (Handing witness Defendant's Exhibit No. 8.)
What is this, Mr. Burns?

A. Letter from Mr. Blake to Mr. Steele dated May 6th.

Q. Was this enclosed in the letter of June 10th?

A. It was.

Q. (Handing witness Defendant's Exhibit No. 9.) What is this, Mr. Burns?

A. Letter from Mr. Blake to Mr. Steele, dated March 19th.

Q. Was that enclosed in the letter of June 10th?

A. Yes.

Q. (Handing witness Defendant's Exhibit No. 10.) Now, what is this, Mr. Burns?

A. Letter of Mr. Blake addressed to Mr. Ward, San Francisco, dated March 19th.

Q. This was enclosed in the letter of June 10th?

A. Yes.

Defendant's exhibits 1 to 10, inclusive, offered in evidence.

Mr. FESSENDEN.—I object to the admission of Defendant's Exhibits Nos. 2, 5, 6, 8, 3 and 10 on the ground that they are inadmissible under the order of January 14, 1920.

The COURT.—Ruling reserved. If on inspec-

(Testimony of Mr. Burns.)

tion they appear to be inadmissible they will not be considered.

Seventh Exception.

Q. Mr. Burns, where are,—as far as you know, where are the original letters of which the one is enclosed in the letter of June 10th, are copies?
[197—31]

A. In the case of the papers relating to the arbitration, they are in the hands of Mr. Potter, the arbitrator, who has left Tokyo and has gone to Philadelphia, and Mr. Blake, who has gone to London to take charge of our London office.

Q. Have you endeavored to get a certified copy of these?

A. Yes, we tried to get it from the Minister at Tokyo and he said it should be obtained from Mr. Potter and we have cabled to America to try to get copies of all the papers in the arbitration.

Q. You have used every effort to try to get the original papers or certified copies? A. Yes.

Q. And up to the present you have not been able to get them?

A. They have not come as yet. I telegraphed Mr. Blake at San Francisco, and at New York. The Tokyo office have. It is out of my jurisdiction completely.

Q. Mr. Blake is the only one who had any direct knowledge of this matter? The only one in authority?

A. The matter was entirely in his hands as general manager of the Company for the Far East.

(Testimony of Mr. Burns.)

Q. Has Mr. Steele ever come to the office in Shanghai and offered to enter into the employment of the— A. Never.

Q. Would you say, Mr. Burns, that in Shanghai it would be possible for a qualified accountant having had twenty-eight years' experience to get a position in Shanghai? [198—32]

Objection by Mr. Fessenden.

Objection sustained.

Q. Mr. Burns, how long have you been in Shanghai? A. Four years.

Q. Have you a good knowledge of business conditions in Shanghai? A. I think I have.

Q. How many men do you employ in the office of the American Trading Company here?

A. 35 Europeans and 110 Chinese.

Q. Do you know whether or not there is any demand for good men in Shanghai to work in connection with commercial houses?

A. Good men find very little difficulty in getting good positions in Shanghai at the present time.

Q. Would it be hard or easy for a qualified accountant having had twenty-eight years' experience to obtain a position in Shanghai, if he tried?

A. It should be easy.

Q. About what salary should a man having had twenty years' experience,—what salary should he demand?

Mr. FESSENDEN.—I object on the ground that this evidence is irrelevant and immaterial. (Withdrawn.)

(Testimony of Mr. Burns.)

Q. About what salary according to the usual salaries paid in Shanghai, would a qualified accountant get who had had twenty-eight years of experience,—what would he be entitled to in some commercial house in Shanghai?

A. Depends upon the nationality of the house. An American firm would pay a qualified accountant, with a good reputation, and good standing, with [199—33] that number of years' experience, from three hundred gold dollars per month to five thousand gold dollars per year.

Q. Now, Mr. Steele has intimated that you have attempted to prevent him from getting other employment in Shanghai, is that so?

A. No, we have never had a reference made to us since I have known that he has been in Shanghai.

Q. You don't know whether or not anyone ever contemplated employing him? A. No.

Q. Did you ever authorize anyone in writing, Mr. Burns, to make a contract for the employment of an accountant? A. No.

Q. Any conversation that you might have had with anyone regarding this matter was all done verbally and nothing in writing? A. Yes.

Q. Now, under what law is the American Trading Company in Shanghai incorporated?

A. State of Maine.

Q. And the American Trading Company Pacific Coast?

(Testimony of Mr. Burns.)

A. Mr. Fessenden states that it is under the State of Virginia.

Q. Up to the time of the filing of this action you believed it was incorporated under what State?

A. The State of California.

Q. It is entirely a different corporation from the American Trading Company of Shanghai?

A. Yes.

Q. Is the American Trading Company, Pacific Coast, your general agent in San Francisco or not?
[200—34] A. No.

Q. Do you forward goods to California to other persons than the American Trading Company, Pacific Coast? A. Yes.

Q. Does the American Trading Company of the Pacific Coast make contracts with other concerns in Shanghai, other than with the American Trading Company of Shanghai? A. Yes.

Q. All transactions with them are done in the same manner as with other companies?

A. Yes.

Q. When you make a contract with them it is done in the usual form? A. Yes.

Q. They sign indents just as if it was a separate concern entirely?

Objection by Mr. Fessenden.

Cross-examination.

(Questions by Mr. FESSENDEN.)

Q. Mr. Burns, your office here and yourself are under the supervision and control of the President and Board of Directors in New York? A. Yes.

(Testimony of Mr. Burns.)

Q. Absolutely? A. Yes.

Q. And the Board of Directors can employ a man to go into or work in your office, Tokyo, Yokohama, or any office they like? A. Yes. [201—35]

Q. And the employment—I understood you to say in the direct examination the President did authorize and instruct Mr. Steele to be employed through its San Francisco office? A. Yes.

Q. Did Mr. Steele telephone to you after he came here, as you heard him testify? A. Yes.

Q. He did? A. Yes.

Q. Did he ask you to pay him what?

A. No, I told him he had already started to sue us and as suit was in the court he could consult with our attorneys through his.

Q. Did you get any letters from him?

A. Yes.

Q. Did those letters refer to his employment with you?

A. They were referred back to the Tokyo office.

Q. You refused to answer them? A. Yes.

Q. They referred to—

A. I don't remember, I referred them back to Mr. Blake.

Q. If Mr. Steele had authority to work for you would you have taken him?

A. If Mr. Blake had formally sent Mr. Steele to me I would have done so under his instructions as my superior officer.

Q. If he didn't instruct you, you wouldn't?

A. No.

(Testimony of Mr. Burns.)

Q. As a matter of fact you had requested Mr. Blake not to send Mr. Steele and you didn't want Mr. Steele. [202—36] A. No.

Q. You also said a mistake had been made, and I understand by that you mean in the employment of Mr. Steele, before he was actually employed?

A. Yes.

Q. Under the instructions of the President at New York?

A. Yes. I didn't know it at that time.

Q. But you know it now? A. Yes.

Q. Now, how did you—since Mr. Steele has been over here have you told anyone that he was an Eurasian? A. No.

Q. Not anyone?

A. No. Only my attorneys.

Q. Have you ever told anyone—made the same charges against his ability or efficiency that you made here?

A. No, I can't discuss a case before it comes to trial.

Defendant rests.

Adjourned at 1:00 P. M. until 3:00 P. M.

REBUTTAL.

Testimony of Mr. Steele, for Plaintiff (In Rebuttal.)

Questions by Mr. FESSENDEN.

Q. Now, Mr. Steele, as a matter of fact are you of Eurasian blood?

(Testimony of A. T. Steele.)

A. Absolutely not. I have not a drop of Asiatic blood in my veins.

Q. What was the character of the actual services which you performed for the American Trading Company in Tokyo? [203—37]

Mr. BRYAN.—I object to all evidence attempting to show the character of the defendant's services rendered at Tokyo, that fact having already been determined on the pleadings.

The COURT.—Ruling reserved.

Eighth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. What is the character of the services you performed in the Tokyo office? What class of work did you do?

A. I was practically manager of the financial department. Attended to the credits and collections and I was manager of the accounting department of the American Trading Company, Tokyo, and was head of that department with a number of men under me who did the bookkeeping and handled the details of the accounts of the company, and took care of the records and everything.

Q. Did your duties as performed involve the exercise of discretion?

Mr. BRYAN.—I wish a general exception noted to all such evidence.

Q. Were your services performed in the Tokyo office, did they involve any discretion?

A. In the capacity of manager a great deal of

(Testimony of A. T. Steele.)

discretion was vested in me. [204—38]

Q. During the time you served there in your exercise of that discretion did you at any time have occasion to question some of the accounts of other departments which were submitted to you as chief accountant?

A. Yes, sir, I had some occasions of that nature.

Q. Now, you say you did question some accounts which were submitted to you for your approval?

A. Yes, sir.

Q. What was your reason?

Mr. BRYAN.—I object on the ground that this evidence is irrelevant, immaterial and prejudicial to the case of the defendant, and further that this fact has already been determined upon the pleadings.

The COURT.—Objection overruled.

Ninth Exception.

To which ruling of the Court the defendant then and there took exception.

Q. Why did you object to some of the accounts?

A. Because I deemed myself responsible for the accuracy of the accounts of my department and certain statements were put before me in the capacity of manager of my department for endorsement and I declined to endorse anything that was not right.

Q. The COURT.—Put before you by whom?

A. By Mr. Moss, for example, the building department manager, was one.

Q. Any others besides Mr. Moss?

(Testimony of A. T. Steele.)

A. No, Mr. Moss, the manager of the building department was the only man whose statements I questioned and whose handling of his department I didn't want to endorse, as chief accountant.
[205—39]

Q. Just what do you mean, endorse?

A. He wanted to pass through our department incorrect amounts which he was not entitled to.

Mr. BRYAN.—I object to all evidence tending to show the character of the plaintiff's services in Tokyo, that fact having already been determined upon the pleadings.

Ruling reserved. The evidence will not be considered if it appears that you are entitled to judgment on the pleadings.

Tenth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. By endorsement, just explain what you mean. Do you mean you had to sign these accounts as correct?

A. I had to O. K. those incorrect statements.

Q. After you had O. K.'d the statements were they sent to the head office in New York?

A. Yes, sir, and I didn't want to be identified with statements that were not absolutely correct and I declined to put my signature to them.

Q. When incidents like that occurred, did you refer them to Mr. Blake?

A. Yes, sir, on more than one occasion the differences which came up between the building de-

(Testimony of A. T. Steele.)

partment and my department.

Q. At any time while you were employed there did Mr. Blake, either directly or indirectly, criticize you?

A. Not a word of criticism as long as I was there, until April 30th.

Q. And the 30th of April was more than a month after you were dismissed?

A. Yes, after I wrote him a letter.

Q. And during the course of your employment there did you make recommendations which, in your [206—40] judgment, would tend to improve the system of accounts?

A. I certainly did.

Q. Did you submit those to Mr. Blake?

A. Yes, sir; in the form of a letter.

Q. Did Mr. Blake adopt them? A. No, sir.

Q. When you submitted those matters which you regarded would improve the system, did Mr. Blake take exception to your submitting them?

A. No, indeed, he expressed his approval of my recommendations, but said—

Q. At any time from the time you entered the employ of the Tokyo office of the American Trading Company up to the date you were dismissed—

A. Do you mean March 19th or April—

Q. When you actually got notice that your services were no longer required, had Mr. Blake or any other person in authority in the Tokyo office, informed you that your services were not satisfactory? Between the time you started work at the Tokyo office

(Testimony of A. T. Steele.)

and the time you received notice that your services were no longer required?

A. Not a word from anybody to that effect.

Q. Did Mr. Blake, or any man in charge of the Tokyo office, of the American Trading Company, inform you that they considered your conduct insubordinate there?

A. No, sir; not a word to that effect.

Q. Did anyone in authority in that office, anyone superior to you, ever criticise you or tell you you were not keeping proper office hours?

A. No. On one or two occasions Mr. Blake saw me [207—41] in the hall leading to my office and he had already come in, I think it was about a quarter of an hour or twenty minutes to nine, and he said, "Well, you are late," and I said, "yes, but it was on the Company's business."

Q. Now, as a matter of fact, during the period you served there, did you serve the full extent of the office period?

A. More than that. I didn't go to tiffin during the lunch hour of twelve to two. I was the only person in the office during the lunch period.

Q. About how long is that period?

A. From twelve to two. And during an illness I attended.

Q. You were ill?

A. Yes. Against the Doctor's advice, during the flu scare there. He advised me to stay at home, and I even attended the office during my illness trying to do my duty by the Company.

(Testimony of A. T. Steele.)

Q. When was the first time it was ever brought to your attention that Mr. Blake or anyone else in authority over you, were dissatisfied with your services?

A. The point of dissatisfaction was never mentioned to me by Mr. Blake.

Q. Never mentioned?

A. Never. Nor by anybody in the office.

Q. When was the first time that any claim that you had been insubordinate mentioned to you?

A. When I read Mr. Manley's affidavit was the first time.

Q. When you read it in this court? [208—42]

A. Yes, sir; the first time that I heard something about that.

Q. Now, when was the first time that you were informed you were considered a disturber of the discipline of the office?

A. When I read those affidavits. Nobody-ever told me that while I was there in Tokyo.

Q. Now, when you were dismissed by Mr. Blake were you ever informed that your services would not be required in Shanghai because of inefficiency or—

A. No, sir; neither verbally nor in writing did he ever say so.

Q. What was the reason?

A. The reason was that Mr. Burns had made arrangements with Mr. Manley to continue in the employ of the Company and as I was to replace Mr. Manley there was no need for me to go to Shanghai as I was not needed here.

(Testimony of A. T. Steele.)

Q. When was the first time you had any friction with Mr. Blake?

A. The first time was on the 30th of April.

Q. And you were dismissed on the 19th of March?

A. Yes, sir.

Q. And what gave rise to that friction?

A. I brought a cashier order with me for one thousand yen.

Q. You presented it to Mr. Blake?

A. I presented it to Mr. Blake because the manager of the Tokyo office declined to O. K. it, without Mr. Blake's indorsement.

Q. And what was your purpose for presenting this order? [209—43]

A. I had received a letter from Mr. Ward, or a cablegram from Mr. Ward to the effect that I was to await advice in Tokyo, and that was the understanding, you see.

Q. At the time you presented this order?

A. I wanted to await advices from Mr. Ward in Shanghai instead of Tokyo as they didn't want me there.

Q. You mean by that that you presented this order for funds to proceed to Shanghai?

A. Yes, and to wait there. I wanted about a month's salary—I figured about a thousand yen,—and await advice from Mr. Ward, in regard to the balance of my contract.

Q. And that is the first time, you say, any friction occurred? A. Yes, and he got annoyed.

Mr. BRYAN.—I renew my previous exception.

Noted.

(Testimony of A. T. Steele.)

Q. Sometime subsequent to your dismissal by Mr. Blake, you entered into negotiations with Mr. Blake to arbitrate your differences about this matter?

A. Yes, sir.

Q. Now, how were those negotiations conducted? Verbally or in writing?

Mr. BRYAN.—I object on the ground that the agree—[210—44] forth and admitted in the pleadings, cannot be changed by extraneous evidence.

The COURT.—Objection overruled.

Eleventh Exception.

To which ruling of the Court the defendant then and there excepted.

Q. Now, Mr. Steele, when negotiations were arranged for this arbitration were they conducted between you and Mr. Blake by correspondence?

A. Yes, sir.

Q. (Handing witness Plaintiff's Exhibit "F.") Now, Mr. Steele, take a look at that and tell us what it is.

A. This is a copy of a letter that I wrote to Mr. Blake, the Vice-president and General Manager of the American Trading Company.

Q. This is a copy of a letter you wrote to Mr. Blake?

A. Yes, embodying the understanding between Mr. Blake and I that—

Q. This is a press copy of your own handwriting?

A. Yes, sir.

Q. I will read this letter.

Mr. BRYAN.—I object on the ground that this

(Testimony of A. T. Steele.)

letter is not admissible in evidence because the agreement to arbitrate, as set forth and admitted in the pleadings, cannot be changed by extraneous evidence.

The COURT.—Objection overruled.

Twelfth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. This is a letter you send dated May 2d, 1919, addressed to Mr. Ward. (Reads letter.) [211—[45]

Handing witness Plaintiff's Exhibit "G."

Q. And what is this?

A. This is Mr. Blake's reply to my letter confirming the subject matter to be arbitrated.

Q. You are familiar with Mr. Blake's signature?

A. Yes, sir. He signed it as Vice-president of the Company.

Mr. BRYAN.—I object on the ground that this letter is not admissible in evidence on account of the fact that the agreement to arbitrate as set forth and admitted in the pleadings cannot be changed by extraneous evidence.

The COURT.—Objection overruled.

Thirteenth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. Now, Mr. Steele, after the exchange of these letters, were these letters submitted to the arbitrator, Mr. Potter? A. Yes, sometime later.

Q. Now, did you ever appear before Mr. Potter as an arbitrator? A. No, sir.

(Testimony of A. T. Steele.)

Q. Were you ever given an opportunity to appear in person before Mr. Potter? A. No, sir.

Q. Do you know whether Mr. Blake appeared before him in person or not?

A. I don't know personally, but I have a letter from Mr. Potter advising me that both of us would appear before him, but as I didn't appear, I presume that Mr. Blake didn't appear.

Q. Did you have a summons to appear before Mr. Potter? [212—46] A. No, sir.

Q. Did Mr. Potter ever give you any notice of any kind as to the manner in which you were to present your case to him? A. No, sir.

Q. You did give him a written brief?

A. Yes, sir.

Q. Was that at his suggestion?

A. It was at the Ambassador's suggestion to put my claims in the form of a brief. That was the first proceeding.

Q. What did you submit to the arbitrator—before we get to that, do you know whether Mr. Blake submitted a brief?

A. I do not know that he did, but I presume that he did.

Q. Did you ever see any brief submitted by him?

A. No, sir.

Q. Were you ever given any opportunity to testify before the arbitrator as to anything submitted by Mr. Blake? A. No, sir.

Q. Have you any knowledge whatever of what Mr. Blake submitted to the arbitrator?

(Testimony of A. T. Steele.)

A. None whatever.

Q. Now, what matters did you actually submit to the arbitrator? Just tell it briefly, what was the subject matter? You don't know what Mr. Blake submitted at all out the matter you submitted to Mr. Potter under this arrangement you had with Mr. Blake?

A. I submitted matters that related to my claim against the Company for breach of contract. [213—47]

Q. Of what contract?

A. Of the original contract with Mr. Ward in San Francisco, and my compensation in connection with it. The damages that should be paid to me for breaking that contract.

Q. You submitted the original contract that was signed by you and Mr. Ward? A. Yes, sir.

Q. And the compensation to be paid to you under that, and anything more? Just generally, the subject matter.

Mr. BRYAN.—I object on the ground that this is irrelevant and immaterial. (Withdrawn.)

(Handing witness Plaintiff's Exhibit "H.")

Q. Now, Mr. Steele, take a look at that and tell me what it is, please.

A. It is the original brief that Mr. Potter returned to me.

Q. Which you submitted to Mr. Potter?

A. Yes, and Mr. Potter returned to me.

Plaintiff's Exhibit "H" offered in evidence. Received without objection.

(Testimony of A. T. Steele.)

Q. Now, after you had submitted that brief, did you receive an award from Mr. Potter?

A. Yes, sir; I did.

Q. Have you that award?

A. (Plaintiff's Exhibits "I" and "J" offered in evidence. Received without objection.)

Q. After you received that award, did you abide by it? A. Did I what?

Q. Did you abide by it, did you consider you were bound by it? [214—48] A. I should say not.

Q. You did not? A. No, sir.

Q. Did you take legal advice on the question?

A. Yes. sir.

Q. You did? A. Yes, sir.

Q. Just one question more, Mr. Steele,—while in Tokyo were you ever accused of being an Eurasian by anyone?

A. No, sir. No one ever took me to be an Eurasian. It was a bolt out of the blue when I was accused by Mr. Burns of that to-day. Mr. Burns' statement that he got it from Mr. Ward is made out of whole cloth because Mr. Ward and I had to make out certain papers for securing a passport at Washington.

Objection by Mr. Bryan.

A. So far as I recall, your Honor, Mr. Burns said Mr. Ward told him I was an Eurasian, in San Francisco, and I say that statement was made out of whole cloth. It is not true and cannot be true because Mr. Ward assisted me in making out my papers, my application, and he also signed the

(Testimony of A. T. Steele.)

recommendations to the State Department at Washington to give me a passport, and he knew from the particulars I had to give to get that passport, my parentage, and I stated there that I was of American parentage, the son of John Tilton Steele, and that on both sides I came of American stock.

Cross-examination.

(Questions by Mr. BRYAN.)

Q. Mr. Steele, you had some trouble in getting a [215—49] passport?

A. I had no trouble. If there was any trouble it must have been with Mr. Chapin, the attorney of the company in Washington.

Q. I put it to you that your departure was delayed in San Francisco on account of the delay in getting your passport and you could only get it by Mr. Ward signing a personal guarantee?

A. No, sir.

Q. You deny that?

A. Absolutely. He had to sign the original papers, I believe, under the rules of the State Department in Washington. Clarence M. Smith was one and Mr. Ward the other.

Q. Now, in this brief that you filed with Mr. Potter, that sets forth all the facts on which you based your case, doesn't it?

A. In my case in court, no.

Q. Well, it sets forth the facts upon which you based your case before Mr. Potter? A. Yes.

Q. It was your contention as to your side of the arbitration?

(Testimony of A. T. Steele.)

A. Yes, from a layman's standpoint.

Q. Now, you received a notice from Mr. Potter to appear before him?

A. No, I didn't receive any notice to appear before Mr. Potter.

Q. I thought you testified on the direct examination that you had received notice to appear before Mr. Potter? A. No, sir.

Q. Did you ever ask Mr. Potter that you and Mr. [216—50] Blake appear before him at the same time and submit your verbal contentions orally? Did you ever ask Mr. Potter to do that? A. No.

Q. You never did? A. No.

Q. Now, Mr. Potter asked you to submit a brief. You raised no objection, you submitted your brief?

A. I submitted my brief, as I said before, in conformity with the Ambassador, Mr. Morris. That is what he suggested in the presence of Mr. Potter and I did what was suggested by the Ambassador.

Q. And you state that you never made any demand that you and Mr. Blake appear before Mr. Potter?

A. No, I was not in a position to demand. I was glad to get the matter arbitrated.

Q. Did you submit every contention from a layman's standpoint that you thought would help you in the matter, in your brief?

A. That would give Mr. Potter all the facts in the case so that he could reach a conclusion, or an award, with justice to both sides.

Q. In other words, this brief contained arguments as well as evidence? A. No.

(Testimony of A. T. Steele.)

Q. What did it contain?

A. The facts. All the facts I thought would be of value to Mr. Potter to give him an understanding of the case.

Q. All of the facts on which you based your side of the case? [217—51]

A. Of course subject to counsel's appearance and a proper handling of the matter.

Q. Didn't you have a lawyer in this matter?

A. Later, yes, when I was informed that Mr. Blake had an attorney, and there would be a contest in the Embassy in the presence of Mr. Potter, and he was very much disappointed that he could not come.

Q. According to this award you were awarded a certain amount of salary due to that date. Is that so?

A. Due to the time—as I remember, I was to be paid my salary in full until such a time as I could secure a passage to San Francisco.

Q. And Mr. Blake secured that passage for you and wrote you a letter stating that the passage had been secured? A. Yes.

Q. And you did not answer.

A. Why, yes, the matter was in the hands of my lawyer and he made the required answer.

Q. And you refused to carry out the award?

A. I should say. I was no door-mat.

Q. You refused to accept your salary due to the date of sailing and your steamship passage?

A. I declined that. I had received both a cablegram and a letter from Mr. Ward telling me to await

(Testimony of A. T. Steele.)

advices in Tokyo and I felt that was the proper thing for me to do, to await advices in Tokyo.

Q. You agreed to arbitrate the matter fully for these two contracts? [218—52]

A. No, I simply wanted a settlement on the original contract and I included the second contract to show that it was confirmed by Mr. Blake as Vice-president. For that reason alone.

Q. Yes, you agreed to arbitrate your differences as to both—

A. No, the differences were only in connection with my claim for the original contract.

Q. Then what contract?

A. The original contract.

Q. Oh, the three-year contract. And this award relates to this action? The same facts are in controversy in this action as were in controversy before the arbitrator? The same facts in this case and the facts as were brought out before are both the same. The same disputes. This dispute and the dispute before Mr. Potter were one and the same?

A. Yes, but the differences mentioned by Mr. Blake were in relation to my claim on the original contract. I demanded a settlement on that point.

Q. And you agreed to submit the settlement of your differences to Mr. Potter?

A. There were three points. One was the amount of compensation to be paid to me, second was the amount of bonus and third my passage back, and there was a difference in regard to the

(Testimony of A. T. Steele.)

payment of my compensation in Mex. dollars and the Yen, and we could not come to any agreement and Mr. Blake was quite annoyed about that.

Q. And the arbitrator awarded you the payment of your salary to the date of departure, and passage home? [219—53]

A. I would not call that document an award.

Q. Now, you stated that your services were entirely satisfactory from your view point, and you state you were only called to task on one occasion, about coming late to the office.

A. On one or two, and both times I was on the Company's business. One time to the bank and one to the Embassy.

Q. Is this right? (Reads:) "On three occasions the writer called Mr. Steele to task for his disregard of office rules and during one of these interviews told him that if he found it impossible to comply with our regulations he had better return to San Francisco. Notwithstanding our repeated admonitions, he still persisted in ignoring the office rules, and we submit that on this point alone we could have found sufficient justification for canceling his contract." Is that so, or not?

A. Absolutely not.

Q. Then Mr. Blake stated something that was not true, in stating that in his brief?

A. A downright falsehood.

Q. Now, Mr. Burns came through Tokyo sometime in February or March, didn't he?

A. Sometime in February.

(Testimony of A. T. Steele.)

Q. That was previous to the time that you were discharged by that letter of March 19th?

A. Yes, sir.

Q. Now, did you hear what Mr. Burns said, or what Mr. Blake said, regarding your efficiency or services rendered? Did you hear what he said?

A. At that time [220—54]

Q. No, here in the witness-box. Did you hear what he said? A. Yes.

Q. That was previous to your discharge, previous to this letter of March 19th?

A. Yes, sir.

Q. How do you know what was in Mr. Blake's mind?

A. Because I asked him, Mr. Blake, in his office, a few days after he, (Burns) left, I said, "I hope you gave me a good boost." He said, "I didn't have time to talk about anything, Mr. Burns was here such a short time."

Q. Do you deny, then, that Mr. Blake ever made any such statement to Mr. Burns?

A. Absolutely. Either Mr. Blake lied or Mr. Burns lied.

Q. You don't take into consideration that you are probably lying, do you?

A. I am on oath, sir.

Q. So was Mr. Burns.

A. I repeat that either Mr. Burns lied or Mr. Blake lied and I say that on oath.

Q. This contract says that the services rendered by you shall be satisfactory and efficient. Were

(Testimony of A. T. Steele.)

they? A. So far as I know, yes.

Q. Who shall be the judge as to whether the employees' services are satisfactory or not, employee or employer?

A. I don't think there was anybody in the Tokyo office to decide that point.

Q. In other words, you were more competent than anyone in the Tokyo office? [221—55]

A. There was nobody—

Q. You were the one man yourself, you tried to tell them, every other man in the office, how to carry on his own business, didn't you?

A. No, sir; I did not.

Q. And yet you say they were not capable to be judges of whether you were efficient or not?

A. No, sir; they were not.

Q. Do you say Mr. Blake is not competent to say whether or not your services were efficient?

A. No, sir.

Q. Well, he was in the Tokyo office, was he not?

A. Yes, sir, but he knew very little about accounting.

Q. You don't think he knew whether or not you were competent? A. I told him so.

Q. That was your opinion? A. Yes, sir.

Q. Mr. Blake was manager of the American Trading Company for the Far East? A. Yes.

Q. He had been there for some time? A. Yes.

Q. He was a man of wide and large business experience?

A. I don't know about being a man of wide expe-

(Testimony of A. T. Steele.)

rience, but he certainly had experience of the affairs of the American Trading Company, but very little in the matters of accounts.

Q. Did you ever write any letters to Mr. Ward regarding the affairs of the Tokyo office?

A. That was only—

Q. Answer my question. Did you or did you not. Did you ever write any letters to Mr. Ward [222—56] regarding the affairs of the Tokyo office?

A. Yes.

Q. You did? A. Yes.

Q. You knew at that time that the American Trading Company of the Pacific Coast was a different corporation? A. No, sir, I didn't.

Q. You knew that Mr. Ward had nothing *to with* the Tokyo office? A. No, sir, I didn't.

Q. You knew that he was not in charge of the Tokyo office? You knew he was not the president of the company?

A. I knew he was the vice-president.

Q. Well, you knew that he was not the president?

A. Of course.

Q. You knew he was not over Mr. Blake?

A. I thought he *was* over Mr. Blake.

Q. And you were writing letters to Mr. Ward regarding the affairs of the Tokyo office?

A. So far as I, in my position as chief accountant would consider—

Q. Who was your direct superior?

A. Mr. Mauger.

Q. And Mr. Blake was over Mr. Mauger?

(Testimony of A. T. Steele.)

A. Yes.

Q. And you thought you could write a letter to someone over Mr. Blake's head?

A. Why, I am a free agent, yes.

Q. You were a free agent? A. Why, sure.

Q. You could do anything you wanted to in that [223—57] position?

A. If it was justifiable, yes.

Q. You could come down late to the office?

A. No, sir.

Q. You could leave earlier than anybody else?

A. I was there, always, later than anyone else.

Q. You said you could do anything you liked?

A. Anything justifiable as I deemed proper, as the head of my department.

Redirect Examination.

(Questions by Mr. FESSENDEN.)

Q. What was the purpose of your writing to Mr. Ward?

A. The purpose was. During my work in the Tokyo office I observed a lot of things that were done that were not in the interests of the company, and so I thought as Mr. Blake didn't want me, and Mr. Burns didn't want me, that it would be a good chance for me to be chief auditor for the head office, and I thought Mr. Ward would use his best efforts to bring that about for me.

Q. You knew at that time—Mr. Ward has signed as vice-president for the American Trading Co.?

(Testimony of A. T. Steele.)

A. Yes, sir, and I thought he was superior to Blake.

Q. When you wrote those letters, or any letters, to Mr. Ward, was your intention actually in the interests of the company?

A. Yes, sir. I thought that I, or someone else, should be chief auditor to protect the interests of the company.

Q. What was the particular reason that you thought they needed protection?

A. For example, the stock account of the building [224—58] department was never verified. The balance of the stock on hand from time to time, period to period of six months were never verified. They were put in the books as being so much and God knows whether there was that much on hand or not, and Mr. Moss was taking commissions all the time regardless of the company's interests.

Q. As head of the accounting department of the Tokyo office you were of the opinion that things were going on there that were not to the best interests of the company?

A. If I were going to discuss the things I have in my possession I could say a great deal more.

Q. There were irregularities there?

A. Great irregularities there that I thought were my duty to bring to the attention of the head office. That was how I was the disturber of peace of some of them.

(Questions by Mr. BRYAN.)

Q. Mr. Mauger was in charge of the building de-

(Testimony of A. T. Steele.)

partment? A. No, sir, Mr. Moss.

Q. These irregularities, you say, were permitted by Mr. Moss or Mr. Mauger?

A. They were permitted by Mr. Mauger and prepared by Mr. Moss.

Q. Do you mean to charge these two men with a crime? A. No, sir.

Q. Well, what do you mean, then?

A. I mean that there were grave irregularities that were permitted by Moss in his department, without proper measures being taken to stop those things, and Mr. Mauger connived at it. [225—59]

Q. You say Mr. Mauger got more commissions?

A. No, Mr. Moss.

Q. Then he was doing something that was improper? A. Yes.

Q. He was your superior? A. He was not.

Q. Well, who was, then? A. Mr. Mauger.

Q. Did you call these things to the attention of Mr. Blake? A. I certainly did.

Q. What did he say?

A. He had some other ideas in his mind and probably preferred to let things slide.

Q. In other words, you were the one in the office that told everyone else how to do everything else, and how to act. A. No, sir.

Q. You objected to the conduct of your superiors.

A. No, sir, I merely protected myself against my superiors.

Q. Well, if Mr. Moss and Mr. Mauger—

(Testimony of A. T. Steele.)

A. Not Mr. Mauger.

Q. Well, can you suggest any reason why Mr. Blake should not put a stop to it?

A. I don't know what was in his mind.

Q. Do you suggest that he was also in cahoots with the rest of them? A. No, sir.

Q. What do you suggest?

A. It is not up to me to suggest.

Q. The natural inference is that he had something to do with it, isn't it?

A. Well, that is up to the Court to decide, not [226—60] up to me.

Q. Do you think it is proper for an employee to make statements of that kind against his employer?

A. I didn't make statements against my employer. Blake was not in charge.

PLAINTIFF RESTS IN REBUTTAL.

Mr. FESSENDEN.—I admitted that I had known Mr. Blake and Mr. Burns for a number of years, and they are men of high character. There is nothing in Mr. Steele's—it is not his intention to charge Mr. Blake, or anyone else, with misconduct.

Mr. BRYAN.—Plaintiffs admits that Mr. Mauser, Mr. Moss and Mr. Blake were connected with the Tokyo office at the time Mr. Steele was there and are men of the highest character and integrity, and men holding high positions in the American Trading Company, and are trusted employees thereof.

Adjourned, subject to call, at 4:35 P. M.

Before the Honorable Charles S. Lobingier, Judge of the United States Court for China, presiding at a session of the said Court in the City of Shanghai, China, commencing at 3:15 P. M. Wednesday, January 28, 1920.

Appearances:

JERNIGAN, FESSENDEN & ROSE, by Mr. Fessenden, for Plaintiff.

FLEMING, DAVIES & BRYAN, by Mr. Bryan, for Defendant.

Before proceeding with the testimony, defendant's counsel in open court, requests that on page 3 of the transcript, [227—61] seventh line from the top, the words "Objection overruled. Exception," be added after Mr. Bryan's objection.

Mr. BRYAN.—With your Honor's permission I move that I be permitted to withdraw my rest in rebuttal and call for further evidence in chief, Mr. Paget.

Application granted, there being no objection.

Mr. BRYAN.—I wish it to be expressly understood that *my* calling this evidence I do not in any way prejudice my rights in my motion for judgment under pleadings. I do not in any way admit that the facts that this witness will testify to are in issue.

Testimony of Mr. A. M. Paget, for Defendant.

Direct Examination.

(Questions by Mr. BRYAN.)

Q. What is your name?

A. Allen Maxwell Paget.

(Testimony of A. M. Paget.)

Q. Where do you live? A. Shanghai.

Q. How old are you? A. 35.

Q. Your occupation?

A. Assistant resident engineer.

Q. Are you connected with the American Trading Co? A. I am.

Q. Are you married? A. Yes, sir.

Q. You are an American citizen? A. Yes.

Q. Do you know Mr. A. T. Steele, the plaintiff in this action? A. I do.

Q. Where did you know him? A. In Tokyo.
[228—62]

Q. When were you last in Tokyo?

A. I left Tokyo Dec. 10th, 1919.

Q. What had you been doing in Tokyo?

A. Assistant resident engineer for the American Trading Company.

Q. How long had you been there?

A. About two years and three months.

Q. Now, were you in Tokyo in the employ of the American Trading Company when Mr. Steele commenced to work for the American Trading Company in Tokyo?

A. I was.

Q. Were you there when Mr. Steele left the employ of the American Trading Company?

A. I was.

Q. Were you in the employ of the American Trading Company during the whole time that Mr. Steele was in the employ of the American Trading Company in Tokyo? A. I was.

(Testimony of A. M. Paget.)

Q. Now, Mr. Paget, Mr. Steele has stated on the stand that there were certain irregularities in the accounts and books of the building department. Do you know whether or not there were any such irregularities?

Mr. FESSENDEN.—I object on the ground that this witness is not competent to testify.

The COURT.—Objection overruled.

A. I know of none.

Q. As a matter of fact did the building department keep any books other than records showing the amount of supplies on hand?

A. I know of no such records.

Q. In what department were you? [229—63]

A. In the building department.

Q. If there had been any accounts kept in this department would you have known about it?

A. I would have.

Q. What was the system in this office as to the paying out of money, by whom was it paid?

A. By the accounts department.

Q. By the accounts department by whose request?

A. By whose request? The manager of the department.

Q. How long were you at the Tokyo office?

A. About two years and three months.

Q. During this whole time you were in that department? A. In the building department.

Q. Are you acquainted with the rules and regulations of the office at Tokyo? A. I am.

(Testimony of A. M. Paget.)

Q. Were these rules and regulations brought about by general custom or were they in writing?

A. By general custom. They may be in writing, I have never seen the written instructions but we followed a regular routine.

Q. Were you in the office of the American Trading Company, Tokyo, previous to Mr. Steele's coming there? A. I was.

Q. Do you know of instances in which money had been paid upon the O. K. of managers of departments? A. Yes.

Q. Do you recall any of these instances?

A. I know in every case in which bills that the department had to pay, the manager would draw [230—64] vouchers and O. K. them. These would be sent into the accounts department and the accounts department would pay on the manager's O. K.

Q. Was the manager's O. K. ever questioned?

A. The custom of the office was not to question the manager's O. K. He was the authority in himself.

Q. Now, that was previous to the time that Mr. Steele came into the Tokyo office? A. Yes.

Q. Now, subsequent to the time that Mr. Steele came, were accounts and vouchers O. K.'d by managers of various departments paid by Mr. Steele without question?

A. You mean—before that Mr. Boyd was in charge.

(Testimony of A. M. Paget.)

Q. Well, subsequent to the time Mr. Steele came?

A. They were paid by the accountant without question so far as I am able to say; never heard of anything to the contrary.

Q. Now, did Mr. Steele ever question any of these vouchers? A. I understand he did.

Mr. FESSENDEN.—You mean you know of your own personal knowledge he did?

A. Yes.

Mr. BRYAN.—Now, whose vouchers did he refuse to pay?

A. I recall one instance in connection with Mr. Gage, that he refused to pay Mr. Gage's voucher until he had further information regarding it.

Q. Was this matter ever put before Mr. Blake?

A. That I cannot say. It must have gone to Mr. Mauger, at least.

Q. Do you know whether or not this particular item [231—65] was finally paid?

A. I have no doubt that it was, because I am sure that Mr. Mauger would not question Mr. Gage's O. K.

Objection by Mr. FESSENDEN. Sustained.

The COURT.—Do you know?

A. I do not.

Q. Now, what was Mr. Moss's position with the American Trading Company at Tokyo?

A. He was manager of the building department.

Q. How long had he been with the Company?

A. He came with the Company about 1910.

(Testimony of A. M. Paget.)

Q. Is he still in the employ of the American Trading Company?

A. He still is. If I may add further to that I have seen his signature on letters which have come from Tokyo within the last one or two weeks.

Q. Do you know anything about the Truscon Steele Company of Japan? A. I do.

Q. What is that Company?

A. It is an organization of American and Japanese capital. The American end of it, the stock is held by the American Trading Company and the Truscon Steele Company of Detroit. It is a company that has within the last year been organized to take over the business of the building department of the American Trading Company.

Q. Do you know who is the managing director?

A. Mr. Moss has been appointed the managing director.

Q. Mr. Steele has testified that there were some irregularities in the accounts of the building [232—66] department and that he got, and that there were some mistakes and irregularities in the commissions that he claimed. Do you know anything about that?

A. I know nothing about that.

Q. Would it be possible under the system in the Tokyo office for Mr. Moss to get more than he was entitled to in commissions?

Objection by Mr. FESSENDEN. Sustained.

Q. Do you know the system under which money was paid to the employees of the American Trad-

(Testimony of A. M. Paget.)

ing Company in the Tokyo office? A. Yes.

Q. State what that system was.

A. Do you mean salaries, bonuses, or commissions?

Q. Well, salaries, bonuses and commissions.

A. Well, of course with salaries, there was a regular system for paying salaries which men passed through on pay-day. Bonuses were figured up at the end of each six months' period, and with the heads of the departments they received according to their contracts certain percentages. With the junior men, their bonuses were figured out on on the profits of the department, on the salaries they received. That is it would be a months' salary, or two months' salary or six months' salary, depending upon the salaries of that department.

Objection by Mr. FESSENDEN.

Cross-examination.

(Questions by Mr. FESSENDEN.)

Q. You were a junior in the Tokyo office, weren't you?

A. I suppose you would call me that although we [233—67] didn't use that term there.

Q. Your real business was that of draftsman, was it not? A. No, sir, I am an engineer.

Q. You may be an engineer, but weren't you doing more drafting than engineering work?

A. No, sir, I was never a draftsman. There is a great difference between a draftsman and an engineer.

Q. Have you any personal knowledge as to the

(Testimony of A. M. Paget.)

arrangements between Mr. Blake, manager, and the head office, as to his commissions and—

A. Of course not.

Q. Have you any personal knowledge as to the arrangements between the head office—

A. I was not testifying as to commissions, I was testifying to the system, not as to the actual commissions, in all departments.

Q. What personal knowledge have you about that system as applied to anyone besides your department?

A. For the simple reason that the other departments system in doing business is absolutely the same.

Q. How do you know that?

A. Because men have told me.

Q. Men have told you? A. Yes.

Q. No personal knowledge?

A. I have never seen their contract and probably Mr. Steele hasn't seen their contracts.

Q. All you know about this outside of your own department is what you have been told by other men in the office, isn't it? A. Yes. [234—68]

Q. Yes, therefore your Honor, he is not competent to testify.

A. I testify that the system is exactly the same in the other departments as in the building department.

Redirect Examination.

(Questions by Mr. BRYAN.)

Q. By whom were bonuses, commissions and sal-

(Testimony of A. M. Paget.)

aries paid? Who signed the checks?

A. The accountant signed and the manager of the Tokyo office signed. All checks were signed by two men.

Q. And if there were any irregularities in commissions they must have been within the knowledge of the manager who signed the check?

Objection by Mr. FESSENDEN.

The COURT.—That is a matter of argument.

Mr. Bryan asks to have Mr. Steele excluded.

The COURT.—Overruled on the ground that he is a party and entitled to remain.

Q. Now, did you ever have any dealings with the accounting department? A. Yes.

Q. When? A. At various times.

Q. Did you ever have any specific dealings on any specific occasions?

A. On several occasions, yes.

Q. Did you ever have occasion to go to the accounting department to get a statement of any accounts? A. Yes, I did.

Q. When was that?

A. I do not recall the exact date.

Q. Well, about when? [235—69]

A. It was the early part of—

Q. Well, never mind about the time; what happened on that occasion?

A. I was detailed to settle a contract that we had to build a group of buildings and I sought the accounting department to give me a report of money paid to our sub-contractors and money received

(Testimony of A. M. Paget.)

from the owner of the group of buildings.

Q. Did you get that account? A. I did.

Q. Was it correct?

A. No, it didn't agree with the statement we had on record in our department.

Q. Did you go back and call this to the attention of Mr. Steele? A. I did.

Q. Was any excuse given for this mistake?

A. Of course Mr. Steele didn't make up the account, but he had detailed one of his men, and he called him and asked him why this discrepancy was made and to give him full information.

Q. What was Mr. Steele's manner in talking with this subordinate? A. Rather abrupt.

Q. Polite or otherwise?

A. Well, I suppose if he had been talking to me I would not have considered it polite.

Q. Did Mr. Steele ever make any statement to you as to his troubles with the American Trading Company? A. Yes.

Q. Where?

A. In the office, in my own home and in the street.
[236—70]

Q. Did he ever make any statements in public?

A. Well, if you would call the street public, yes.

Q. Did he ever make—were you present?

A. Yes.

Q. What was the substance of those statements?

A. They, well they referred to the way that the system was handled in this that the department managers O.K. was a final decision and accounts

(Testimony of A. M. Paget.)

would have to be passed through without any reference for any information; any further information available for the accountant.

Q. And he didn't like that?

A. No, he told me that he was an auditor and he thought that the auditor should have full information on all vouchers before they were paid.

Q. Was that previous to his leaving the company? A. Yes.

Q. About when was that?

A. Oh, I would say probably three or four months after he came to Tokyo, as near as I can recall.

Q. Did he ever make any other public statements, and where?

A. One Sunday afternoon in church he button-holed me and talked rather loudly about some of his troubles with the American Trading Company.

Q. What was the substance of that?

A. Along the same order.

Q. Were there any other people in the church?

A. Yes, the church was filled.

Q. Were there any other people in hearing distance?

A. Yes, there were people all around us.

Q. Did he ever make any other public statements besides those? [237—71]

A. Yes, in my own home.

Q. Who was present in your home when he made this statement?

A. We were having a dinner party.

(Testimony of A. M. Paget.)

Q. Were there any people there? Any who were not connected with the American Trading Company? A. Yes, there were.

Q. What was the substance of those statements?

A. Well, along the same order as before, trouble he was having with the system and the departments.

Q. That he claimed to be an auditor and not an accountant? A. Yes.

Q. Now, what else did he state at this dinner party that you gave?

A. He stated that Mr. Moss was not running his department in a fair way.

Q. Did he ever make any other statements that were derogatory to the character of Mr. Moss?

A. I do not recall. At that time, that evening, I know both Mrs. Paget and myself tried to turn the conversation off and it was somewhat embarrassing to us to have a guest bring up a business matter which had no interest to our other guests.

Q. Now, do you know of any other—did Mr. Moss, to your knowledge, ever have any unpleasantness with Mr. Steele?

Objection by Mr. Fessenden as leading. Sustained.

Q. What do you know about the services rendered by Mr. Steele to the American Trading Company at Tokyo?

A. I know that there was considerable friction [238—72] between Mr. Steele, Mr. Moss and Mr. Mauger, which probably tended to—

(Testimony of A. M. Paget.)

Q. Do you know what this friction was about?

A. Over the handling of accounts and the system of the—system of handling accounts for all the departments.

Q. Do you know whether or not Mr. Steele ever proposed a new system? A. Yes.

Q. Did he make any report—do you know whether or not he ever made any report as to a new system being put in? A. Yes.

Q. Was that report in writing?

A. Typewritten report, yes, typewritten report.

Q. Did you read that report?

A. Mr. Steele showed me a report. I am not sure whether it—I read it hurriedly. I am not sure whether this is the one he submitted to Mr. Blake for a new system or not.

Q. Do you know whether there was any difference between this system that he proposed and the system already in vogue?

A. I imagine there would be a vast difference.

Q. What was the difference?

A. I do not know; I never went into it at that time.

Q. Now, how long have you been in China, Mr. Paget?

A. I have spent about eight years in China. Before I went to Japan.

Q. What part of China? A. Canton.

Q. Do you know anything about the conditions in Shanghai as far as the difficulty or easiness with which employment may be obtained? [239—73]

(Testimony of A. M. Paget.)

A. From conversations I have had with men in various companies here—

Objection by Mr. Fessenden.

A. I do.

Q. Is it difficult to obtain employment in Shanghai if one desires to do so?

A. I do not think so.

Q. Do you know of any one that wants employees in this town? A. I do.

Q. Who? A. The Asia Bank.

Q. Anyone else?

A. The Grace China Co. These I have personal knowledge of. Other concerns may want someone; I do not know.

Q. In your opinion would it be difficult for a man out of employment to obtain employment in Shanghai?

Mr. FESSENDEN.—I object on the ground that his opinion is not admissible.

The COURT.—Objection sustained.

Q. Do you know whether or not there have been any new business concerns started in Shanghai recently? A. I do not know.

Q. Do you know what the conditions as to American business in Shanghai is at the present time?

A. What sort of conditions do you mean?

Q. Is American business on the up-hill climb or down-hill climb?

A. I would say on the up-hill. Of course new concerns here, some live and some die, but on the whole I think American business concerns are

(Testimony of A. M. Paget.)

[240—74] in far better shape, and there are more American concerns here now than there were a year ago.

Q. Would you say it would be easier to obtain employment here now than when you first came to China? A. Ten years ago? By all means.

Q. If a man really requires to obtain employment could he obtain it?

Mr. FESSENDEN.—I object on the ground that it calls for an opinion.

The COURT.—Objection sustained.

Fourteenth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. Do you know whether or not Mr. Steele ever wrote for a paper? A. Yes.

Objection by Mr. Steele.

Q. Do you know whether or not Mr. Steele has ever obtained any money or revenue for writing articles for the papers?

A. Yes, in Japan he told me that he had received money.

Q. Does he write a good deal or not?

Objection by Mr. Fessenden, as leading. Sustained.

Q. What articles have you seen written by Mr. Steele in any newspaper in China?

A. Mr. Steele called my attention to one article he wrote for the North China Daily News, I think it is, but I didn't read the article, I didn't have time at the time.

(Testimony of A. M. Paget.)

Q. What was the article about?

A. I think it referred to a man as an Indian.

Cross-examination.

(Questions by Mr. FESSENDEN.)

Q. How long have you been in Shanghai?

A. Since the 15th of December. [241—75]

Q. Have you ever lived in Shanghai before?

A. Never before.

Q. Well, your information as to the possibility of people obtaining employment is *required* in Shanghai during that time? A. Yes.

Q. Now these statements Mr. Steele made to you in public, you say some were on the street?

A. Yes.

Q. Simply to you?

A. Mr. Budell and myself. He will probably recall—

Q. You don't intend to suggest that he was addressing the public at large, do you?

A. No, not purposely. Passers-by, they might have heard and they may have not.

Q. Just as anyone would have a conversation on the street?

A. Except that it was carried on in a loud tone of voice.

Q. Now you were not the head of the building department? A. No, sir.

Q. Relatively what was your position as compared to the head of a department?

A. Well, I came under the head, under the title

(Testimony of A. M. Paget.)

of assistant resident engineer, and Mr. Moss was originally resident engineer and he was raised to the title of department manager.

Q. Now were all checks submitted, as you submitted as a junior in your department, signed by the accountant?

A. All vouchers. The checks were signed by the accountant and by Mr. Mauger. [242—76]

Q. Did you pass your documents in to the accountant for verification?

A. Well, do you mean vouchers?

Q. Well, suppose your department wants to pay out something—would you pass your data into the accountant's department for verification or comparison?

A. Yes, I suppose, bills come in to be paid by the department—bills would be attached to the vouchers and sent to the accounts department.

Q. That was the common practice? A. Yes.

Q. Do you know, as a matter of fact, whether the accountant was accustomed to verifying these bills?

A. I do not think as a general system it was the custom of the accounts department to look into the matter so long as the departments O. K.'d the voucher.

Q. Under the system, so far as it related to your department, did the accountant, if he found a probable error, would he still pay it?

A. I suppose if there was an error, paying for

(Testimony of A. M. Paget.)

something we did not receive, the accountant would question it.

Q. Would you say, so far as your department was concerned, the accountant had any discretion whatever in passing your accounts?

A. The system as I understand, the manager's O. K. was sufficient for authorization for the account to be paid without Mr. —

Q. That is as far as you know. Have you any direct or positive knowledge as to the actual [243—77] authority of the accountant of the American Trading Company, under the system you mention?

A. His authority is to pay when authorized.

Q. Then you have a personal knowledge of instructions?

A. I have never seen written instructions. I have heard verbal instructions, in fact I know—

Q. Your department handled large sums of money, did they not? A. No.

Q. Small amounts?

A. We do not handle money except petty cash.

Q. Your department was accustomed to handling large transactions?

A. Large transactions, yes.

Q. And those large transactions were paid through the accounting department? A. Yes.

Q. Under the signature of the accountant and the manager? A. And the manager, yes.

Q. Under signature—

A. If the check was paid the accountant would

(Testimony of A. M. Paget.)

sign and the manager of the Tokyo office.

Q. Yes, and the checks would not be passed without the signature of the accountant, as far as you know. A. As far as I know.

Q. Now you mention the fact that Mr. Steele made some recommendations as to altering the system, now do you, did you see anything wrong in that?

A. As I stated before, Mr. Steele showed me, I am not sure whether that is the paper I recall. He showed me some letter that he had written, [244—78] and I do not know what was in it, that is I do not remember.

Q. That is, as I understand from your statement, recommending a change?

A. A change, yes. From his conversation I guess that he suggested a change in the method of accounting.

Q. That might make an improvement?

A. Yes, no I will take that back.

Q. According to his judgment?

A. According to his judgment, yes.

Q. How long have you been in the American Trading Company?

A. About two years and three months. I mean in Tokyo, about that time.

Q. Ever been any change or introduction of improvement of methods besides what Mr. Steele did?

A. Not to my knowledge.

Q. Do you know anything about accounts yourself? A. Not a thing.

(Testimony of A. M. Paget.)

Redirect Examination.

(Questions by Mr. BRYAN.)

Q. How long had Mr. Mauger been with the company?

A. Ever since he was a boy about sixteen.

Objection by Mr. Fessenden.

Q. Do you know what Mr. Mauger did before he was manager of the Tokyo office?

A. He was accountant in the New York office.

Testimony of A. T. Steele, for Plaintiff (in Rebuttal).

Direct Examination—Rebuttal.

(Questions by Mr. FESSENDEN.)

Q. Now Mr. Steele, you have heard what Mr. Paget [245—79] has said with regards to certain statements made by you in public. What have you to say, is that true or not? A. Not altogether.

Q. Well, you tell us your version.

A. In the first place, Mr. Paget referred to a conversation that I had with him, in a public street, Mr. Budell being present. I recall such a conversation and it took place one Sunday afternoon after church, and the conversation arose over something I said in regard to my trouble with Mr. Blake.

Q. When did this conversation take place, after you were discharged or before?

A. Oh, yes, after Mr. Potter had rendered his award, some time about the middle of June, 1919. I recall the conversation now.

Q. It took place after you had been discharged?

A. Yes, I would like to state what the conversa-

(Testimony of A. T. Steele.)

tion was because I remember it. I would just like you to know the facts exactly as they occurred. I felt aggrieved about the manner in which I had been treated by Mr. Blake. I said to Mr. Paget that I had rendered the company faithful and loyal service and that I was treated very badly and if head office would know all the facts relating to my case, it would realize that I had served the company faithfully and well. Then Mr. Paget said that Mr. Blake is the American Trading Company. I said, no, Paget, so far as you are concerned as you were engaged by Mr. Moss here, locally, Mr. Blake is the American [246—80] Trading Company, but I was engaged by the head office and I am a superior officer of the company, one of the heads of departments, a responsible man, a responsible chief.

Q. By that you mean of the accountant's department?

A. Yes, of the accountant's department, and so far as I was concerned Mr. Blake was only my senior officer and not my employer, and we went into the matters of the building department accounts, and I said that I didn't charge anybody in the office with being dishonest in any way, shape or manner, and Mr. Paget said, but you told somebody that we were a lot of crooks. I remember this conversation very well, your Honor. I said, Paget, no one but an idiot would talk like that and none but idiots would believe such nonsense. Do you imagine for a moment that I would call the

(Testimony of A. T. Steele.)

whole lot of you from Blake down, a lot of crooks? Well, he said, this is what was told to me. Well, I said, do you believe that I would say a thing like that? You know very well, Paget, that the only trouble between Moss, your boss, and I, is simply because I do not want to assume any responsibility in the accounts rendered by him that I am not sure are correct in every particular. The system of the company is such that the accountant is made responsible for matters that he has no cognizance of, and I am an old auditor, public accountant of San Francisco, and I have known cases where the poor accountant has been made responsible for the acts of their superior officers, and I am not going to be [247—81] caught napping here. Mr. Moss puts his O. K. on all sorts of statements upon the O. K. of Japanese subordinates; he has no time to look over things, and he signs those statements, O. K.'s upon the word of his chief clerk, then he passes them into my department to be O. K.'d, and in every case where the statement was right I never failed to endorse Mr. Moss' cash vouchers, or other statements that he sent in, but only in those cases where I found things were not right I saw to it that Mr. Mauger put his O. K. on first. That was the head and front of my offense while I was in the Tokyo office. The system was an old antiquated system, twenty-five years old, and as a modern accountant I could not make myself responsible without first going to my senior officer and making him responsible first, because if I had

(Testimony of A. T. Steele.)

passed the thing first, if there was any trouble later on and I was not in the Tokyo office Mr. Mauger or Mr. Moss might very well say well Steele was here and he O. K.'d it, and Mauger could say, I saw Steele's O. K. and I passed it. This was an old game, passing the buck and I was not going to be made a party to this business." That was one conversation I remember I had with Mr. Paget, and Mr. Paget will remember every word I said.

Q. Then Mr. Steele, these—many of these accounts you put your signature upon, were they ultimately sent to the head office in New York?

A. Every six months reports were sent to the head office, yes, and I was called upon to sign them [248—82] before they could be sent to head office because head office recognized me as head of their accounts department. So far as the head office was concerned, Mr. Blake was only technically responsible, I was responsible.

Q. Did you, at any time, stand upon the street and blurt out so passers-by could hear, what your trouble had been?

A. Well I will confess that I have a resonant voice but I didn't do it purposely to let anybody hear.

Q. I am asking you whether you purposely made any statements? A. No, I certainly did not.

Q. With the intention of making others hear?

A. I would not have even made this statement in court if they didn't make all sorts of charges in

(Testimony of A. T. Steele.)

that brief, but they forced me to tell these things in sheer self-defense.

Q. Mr. Paget mentioned one occasion where you declined to O. K. some account in his department; found some fault with it.

A. I never declined to O. K. it, without first going to Mauger. I had to put my initial on every cash voucher and every statement that came through my department. All my accounts have got to be signed by me but before I signed anything that I questioned, I went to Mr. Mauger and had him sign first, and in some cases Mr. Mauger didn't take it upon himself to sign but went to Blake to have him sign before he would sign. In many cases Mauger was afraid to sign—

Q. I will ask you about this,—we have heard all about that. Were these occasions in which you refused [249—83] to sign any more than the ordinary reasons for discretion—

Objection by Mr. Bryan. Objection sustained.

Q. Did you ever refuse to put your initial on an account?

A. At first I did, but finally I would have to put my initial after the senior officer had O. K.'d it.

Q. What was your reason?

A. My only reason for declining to put my initial on a statement or anything that would pass through my hands as chief, was because I could not verify it. I could not find anything in my office to hold myself responsible for it.

Q. That was the only reason?

(Testimony of A. T. Steele.)

A. The only reason. No personal reasons save and except in the interest of the company I would say "No, I won't initial this until somebody my senior would pass it, not before."

Q. Give the Court some idea what the volume of business passing you as accountant,—that is say during one month, can you say roughly the amount of checks you had to sign?

A. The business was tremendous. I remember there was an outstanding—

Q. Not anything about the outstanding, answer my question. I want to know if you can just state roughly the amount of money in checks you had to sign for the American Trading Company during the period of one month?

A. In the neighborhood of four million yen per month. Tremendous responsibilities, I had.

Q. You testified you had made certain efforts to [250—84] obtain employment in Shanghai. Have you ever advertised in the newspapers?

A. Yes, sir, I have quite a number of times and also have answered quite a number. I have copies of letters I wrote.

Q. How many?

A. I have applied to over 60 firms here personally.

Q. And you have not been able to find employment?

A. For the reason that men of my grade and capacity are not engaged out here.

(Testimony of A. T. Steele.)

Q. What do you mean by that, men of your capacity?

A. Heads of departments are not engaged here by any firms of any standing.

Q. You mean they are sent out from home?

A. Yes, sir. People of my position, as chief accountants, are not employed here. I have letters to that effect. Standard Oil Co. told me that and Stevenson & Carlson, certified accountants, also told me. I have a letter from Mr. Stevenson—

Q. The last witness said the Asia Bank and the Grace China Co.,—

A. I called in both these places and they didn't want a man in my position and requirements. I would want at least \$500.00 a month. A position of book-keeping, yes. I could get many a position as book-keeper but not as a chief accountant. Lots of positions as book-keepers are vacant here.

Q. Prior to the 19th day of March, which is the date Mr. Blake dismissed you, did you have any friction with Mr. Blake or any other head of the departments, or any man of responsible position in the company? [251—85]

A. Prior to the 19th day of March? Yes, if you call friction, as I described here, my going to Mr. Mauger every now and then to put the responsibility on him for the passing of certain vouchers and statements and reports to head office. If you call that friction, yes, I had quite a few of that kind, but everything passed very smoothly.

(Testimony of A. T. Steele.)

Q. Were your personal relations in the office pleasant?

A. So far as I know. Mr. Paget testified that my personal relations were—

Q. Did you have any knowledge of these charges brought against you prior to your dismissal?

A. Prior to my dismissal I didn't know anything of these charges of insubordination and inefficiency, etc., until I read Mr. Burns' affidavit. It was a bolt out of the blue. I never dreamed I would be charged with such.

Cross-examination.

(Questions by Mr. BRYAN.)

Q. Now, Mr. Steele, you say there are a great many positions as bookkeepers—

A. Yes, I think there are.

Q. You were a bookkeeper once, were you not?

A. I was never a bookkeeper.

Q. Didn't you ever keep books?

A. Never keep books in the way of a subordinate, never.

Q. You never kept books at all?

A. As a subordinate, never. I was a detailed public accountant duly qualified.

Q. You are a (?)—you don't keep books? [252—86]

A. That is the idea, now you have it.

Q. But bookkeeping is a branch of accounting?

A. Is a subordinate branch.

Q. But it is a branch?

A. Why, sure, the science of accounting includes

(Testimony of A. T. Steele.)

bookkeeping. If you don't know that you don't know anything.

Q. But you never filled a position as bookkeeper?

A. Yes.

Q. In Shanghai?

A. No, sir. I would not accept it.

Q. You wouldn't accept it? A. No, sir.

Q. But you could have gotten it if you wanted it?

A. I suppose so if I went out looking for a job of bookkeeping which are usually given to Portuguese and Chinese I understand, and I would not be bunched up with Portuguese and Chinese over here.

Q. You could not get anything that would put you in the position of the head of a department?

A. And in charge of books.

Q. You could have gotten something as a junior?

A. Probably, if I had made an attempt I might have gotten a job as a ledger keeper or a bookkeeper in some small concern.

Q. But you didn't try?

A. I certainly would not make any effort to get a position of that kind.

Q. As a matter of fact, Mr. Steele, you intend to return to the United States as soon as this case is settled, don't you?

A. I don't know, I never plan ahead of time.
[253—87]

Q. You don't intend to return?

A. I don't know what I am going to do. I haven't decided. I haven't made any plans.

(Testimony of A. T. Steele.)

Q. What are some of these sixty firms you have called on, who?

A. I will have to refer to my book, here.

Q. Well, refer to your book.

A. There was the China Realty Company.

Q. What sort of a position did you apply for there?

A. I asked Mr. Adams to help me to get a position.

Q. What did Mr. Adams say?

A. He said he would do the best he could for me, but he didn't have anything at that time for me.

Q. Now, previous to this time you had made some statements up to the American Club, of which Mr. Adams is secretary, regarding the inefficiency with which the club was run. A. I made remarks?

Q. Yes, you.

A. That is absolutely not true.

Q. You never made any remarks?

A. I don't know how the club is run.

Q. I put it to you, that you have on several occasions made some remarks that were derogatory to the manner in which the club was run.

A. It is a deliberate lie.

Q. I put it to you that the Committee of the American Club held a meeting over you.

A. My God! is that so? It is news to me.

Q. Do you deny that?

A. Why certainly. I don't know anything about it.

Q. And you deny it? A. Yes. [254—88]

(Testimony of A. T. Steele.)

Q. And I put it to you that for that reason Mr. Adams never gave you a position in the China Realty Company.

A. That meeting might have been held because I claimed that the Portuguese bookkeeper overcharged me five or ten dollars on my bill and it was—I think it was settled fifty-fifty.

Q. So there was some controversy?

A. Yes, but that was over my bill.

Q. And there was some unpleasantness?

A. Not that I know of. Mr. Adams was very courteous and everything was all right.

Q. Who else?

A. Mr. Perkins of the Standard Products Co.

Q. What did they offer you?

A. He said he would have something for me by the end of the year and I have been busy on a job this month.

Q. Oh, you have been doing something, then?

A. Just only for two or three days now. I have just got something to do in Mr. Perkins office.

Q. How long have you worked in his office?

A. I don't work in his office.

Q. You said you did.

A. He gave me some reports to figure out to make a statement for him for the bank.

Q. Have you been paid? A. No.

Q. Any agreement?

A. No; he is an old friend of mine and I told him he could pay me anything he wanted.

Q. Who else did you call on?

(Testimony of A. T. Steele.)

A. Mr. Merriman, and he told me that it was very [255—89] difficult for a man of my age and experience to get satisfactory work here, and he didn't know of anything that he could offer me or that he knew of.

Q. In other words, he didn't know of any position in which you could be a head of a department?

A. Chief accountant or—

Q. Who else did you call on?

A. Mr. Fuller of the Thomas Simmons Company. He had nothing for me. If I had known anything about fire insurance he could put me in right away as he needed a man for fire insurance.

Q. Did you ever ask for anything other than chief accountant? A. No.

Q. You would not ask for anything else but head of a department—

A. I don't think I am called upon to take any position less than chief accountant at my age.

Q. Who else have you called upon?

A. I will give you a long list. Take your pencil and take it down. American Chinese Company.

Q. All right now. American Chinese Company. Result, find anything there?

A. Nothing doing there.

Q. No vacancy as chief accountant? A. No.

Q. Any other vacancies? A. No.

Q. Did you ask for anything else besides chief accountant? A. I told you no, I have not—

Q. As a matter of fact, the reason for you not [256—90] getting employment is that you have

(Testimony of A. T. Steele.)

refused anything but chief accountant?

A. Or accountant.

Q. That is the sum total of it?

A. That is the sum total.

Q. You admit if you wanted other employment, as bookkeeper, you could have gotten it?

A. I am not called upon to work for anything—an American accountant of San Francisco is not going to—

Q. Are all accountants that proud?

A. I hope they are as sensible, if not as proud.

Q. Now, I put it to you, Mr. Steele, that the system in the Tokyo office—

A. What do you mean by put it to me?

Q. Please don't interrupt me.

A. I want to know what you mean—put it up to me, that is slang.

Q. It means, I am asking you. Now, I put it to you that the system of the Tokyo office before you went there,—that when accounts were O.K'd. by managers of departments they were paid?

A. I don't know whether they were paid upon the O.K. of the department manager without the approval of Mr. Mauger. I don't think anything was paid. You are asking me something that is previous to my time.

Q. When you refused to O.K. accounts of the heads of departments, you had some trouble, didn't you?

A. I never refused to pay anything that was O.K.'d by the head of a department.

(Testimony of A. T. Steele.)

Q. You never refused to pay anything O.K.'d by the [257—91] head of a department?

A. No, unless I went to Mr. Mauger and got his approval first, do you see?

Q. You are quite sure about that?

A. Absolutely.

Q. Now, you tried to change this system so you could go into all the facts, didn't you?

A. No, sir.

Q. You wanted to go down into the bottom of it?

A. No, sir.

Q. You were not willing to take the word of the head of the department who put his O.K. on it?

A. In a great many instances I saw the statements and I certainly put my O.K.

Q. When the statement was O.K'd. by the head of the department, he took the responsibility of it, he was responsible? A. Technically, yes.

Q. Now, your duty was to put it on the books, wasn't it; to pay the account and put—

A. Not until I got Mr. Mauger's approval.

Q. Well, then you didn't have authority. You had to get Mr. Mauger's approval first, is that it?

A. Why, that was the regular routine, yes. Mr. Mauger was technically responsible for everything that went out of the Tokyo office and I was responsible for everything that went out—

Q. That was the system before you went there?

A. Yes.

Q. And you tried to change it?

A. I tried to protect myself. All I did was to

(Testimony of A. T. Steele.)

try to protect myself from the effects of that [258—92] system.

Q. Mr. Boyd never had any trouble, did he?

A. No, because he was an animated rubber stamp, and I refused to be that.

Q. In other words, you consider that you were more than an animated rubber stamp. You consider you were over the other department heads, was that it? A. No, sir.

Q. You considered that you could go beyond their heads?

A. No, sir, you are getting it all wrong, you don't seem to get the point.

Q. I don't think anybody else does.

A. Well, the Judge will.

Q. Now, have you ever got any money from the North China Daily News? For writing articles?

A. Yes, I received fifty, I think it was, fifty Mex. dollars.

Q. Are you quite sure that was all?

A. That was all.

Q. Absolutely sure about that? A. Absolutely.

Q. Now, then why did you state the last time you were on the stand, on Friday, I believe it was, that you had never received any money?

A. Oh, if you go back to my record you will find I referred to my accounting business, as a public accountant. So far as I recall I earned nothing. My writing has been my hobby for years and I never considered that as my source of revenue.

Q. But you got money for it? [259—93]

(Testimony of A. T. Steele.)

A. Yes, but it was always aside from my work.

Q. But that is getting money.

A. Yes, but I made particular reference to getting money from my business. I have never considered my writing as a business. It is just a hobby with me. I write at night, not in business hours.

Q. You got money from writing while you were in Tokyo, didn't you?

Objection by Mr. Fessenden. Overruled.

A. That was during the time I was in the Tokyo office, yes. I think Fleisher gave me thirty or thirty-five yen and I promptly sent it to the Tokyo Orphanage as my contributions. In fact all my earnings from writing are given in charity.

Q. Some of these articles you wrote caused quite a good deal of comment, didn't they?

A. I don't know.

Q. And on one occasion you were accused of being pro-German on account of some of your articles; isn't that so? And the matter was taken up by some of the good Americans and some of the British people in Tokyo and put up to Mr. Blake.

Objection by Mr. Fessenden. Overruled.

A. About two or three weeks after my arrival in Tokyo, before ever I wrote anything at all or even thought of writing anything, I was called into Mr. Blake's office and Mr. Blake very seriously informed me that somebody had told Mr. Moss that I was a pro-German and an Irish-American with pronounced anti-British views, and I told Mr. Blake it was ridiculous, that [260—94] he could

(Testimony of A. T. Steele.)

easily ascertain if I was a pro-German or anti-British by referring to the Embassy, and he telephoned to Commander Horne and asked Commander Horne whether or not any such report was made about Mr. Steele, and Commander Horne replied over the telephone that I was in good standing at the embassy. This is what Mr. Blake told me.

Objection by Mr. Bryan. Overruled. Exception.

And in connection with the charge that I was an Irish - American with pronounced anti-British views, I had written an article on India in which I had spoken favorably of British rule there and at about that time the British people at the Tokyo Club looked askance at me, and after reading that article their actions were entirely changed and they said to me, "Why, Mr. Steele, your friends at the American Trading Company have said all sorts of things about you. That article puts you entirely in the clear."

Mr. Fessenden offers plaintiff's Exhibits "H" to "I." Received without objection.

(Motion by Mr. Bryan.)

I wish to renew my motion as to judgment on the pleadings. I submit that I am entitled to judgment on the pleadings. I don't suppose Your Honor cares to hear me now.

The COURT.—At great length in your brief. You can start from to-day.

(Motion by Mr. BRYAN.) I move the Court to take depositions on behalf of the defendant, on commissions, of Mr. Mauger and Mr. Moss, regarding the system of doing business, and of O.K.'s questioned in the Tokyo [261—95] office, on account of the evidence brought out in the previous hearing and the evidence this afternoon.

The COURT.—Motion made by defendant's counsel for judgment on the pleadings. Ruling reserved. Motion for continuance to take further depositions overruled on the ground that the case was closed on January 23d, defendant having rested (See p. 37.), and was reopened by consent for the examination of one witness only. Neither at the time of the original hearing nor at the time of applying for the re-opening was any suggestion made as regards the taking of further depositions; and in view of the long time that has elapsed since the case was begun, the Court is of the opinion that the further delay incident to the taking of these depositions would not be justified.

Tenth Exception.

To which ruling of the Court the defendant then and there excepted.

The defendant is allowed three weeks from this date for the presentation of its brief, and the plaintiff is allowed three weeks from the filing of defendant's brief, or so much thereof as he cares to take, for reply.

ADJOURNED at 5:25 P. M. Subject to call.

The foregoing constitutes the testimony and state-

ment of all the testimony introduced and offered upon the trial of this cause. [262—96].

The foregoing constitutes the testimony and statement of all the evidence introduced and offered upon the trial of this cause.

And now on this 14th day of August, 1920, the defendant presents this, its bill of exceptions, and prays that the same be allowed, signed, sealed and made a part of the record herein.

FLEMING, DAVIES & BRYAN,

Attorneys for Plaintiff in Error.

JERNIGAN, FESSENDEN & ROSE,

Per S. F.

(Order Approving, Allowing and Settling Bill of Exceptions.)

The foregoing bill of exceptions is hereby approved, allowed, settled and made a part of the record herein.

CHARLES S. LOBINGIER,

Judge of the United States Court for China.

Filed Aug. 27, 1920. James P. Connolly, Clerk.
[263]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Petition for Writ of Error.

And now comes the American Trading Co., the defendant herein, and says that on or about the 20th day of April, 1920, this Court entered a judgment herein in favor of the plaintiff and against the defendant, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this defendant, and of which will in more detail appear from the assignment of errors which is filed with this petition.

WHEREFORE this defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court *for* Appeals for the Ninth Judicial Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

FLEMING, DAVIES & BRYAN,
Attorneys for Defendant.

Filed at Shanghai, China, Aug. 27th, 1920. James P. Connolly, Clerk. [264]

In the United States Court for China.

Cause No. —.

Civil No. —.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Order Allowing Writ of Error.

This 14th day of August, 1920, came the defendant, by its attorneys, Messrs. Fleming, Davies & Bryan, and filed herein and presented to the Court its petition for the allowance of a writ of error, an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error, the defendant having given bond according to law in the sum of seven thousand five hundred dollars (\$7,500.00) United States currency, gold coin, which shall operate as a super-sedeas bond.

CHARLES S. LOBINGIER,

Judge of the United States Court for China.

Filed at Shanghai, China, Aug. 27th, 1920. James P. Connolly, Clerk. [265]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Assignment of Errors.

Now comes the defendant in the above-entitled action being the plaintiff in error herein and in connection with its petition for a writ of error makes the following assignment of errors which it avers occurred in the trial and decision of this cause in said court, to wit:

1st.

That the said Court erred in overruling the objections of counsel for plaintiff in error to the following testimony of the witness, A. T. Steele: (Bill of Exceptions, pages 3-5).

“Q. How do you know that?

Objection by Mr. Bryan. Objection overruled.

Exception noted.

A. A few days before the signing of the agree-

ment, Mr. Ward showed me a telegram which was signed by Sutcliff to the effect that—

Mr. BRYAN.—I object.

The COURT.—Ruling reserved; if the evidence proves to be improper it will not be considered.

First Exception.

Exception as to manner of ruling and as to admission of evidence.

Q. You say you saw a telegram, where did you see [266] that telegram?

A. It was in the private office of Mr. Louis A. Ward, vice-president of the American Trading Company.

Q. At what place? A. San Francisco.

Q. Do you know where that telegram is at the present time?

A. I think it is in the office of Mr. Ward.

Q. Are you familiar with the customs and practice of the American Trading Company?

A. Am I what?

Q. Familiar with the customs and practice of filing?

A. It is probably in the custody of Miss Versalovitch, private secretary to Mr. Louis A. Ward.

Q. Can you tell the Court the contents of that telegram?

Objection by Mr. Bryan.

A. Engage Steele as chief accountant Shanghai office subject to ten thousand dollars gold bond and his credentials being found entirely satisfactory. Sutcliff.

Q. Now, do you know what Sutcliff was?

A. Sutcliff, Mr. Ward informed me—

Mr. BRYAN.—I object to any conversations had by the plaintiff with Mr. Ward.

The COURT.—Objection overruled.

Second Exception.

To which ruling of the Court the defendant then and there excepted.

A. I know who Mr. Sutcliff is now?

Q. Who is he? [267]

A. He is the vice-president of the American Trading Company, New York, and executive head of the far eastern division of that company.

Q. Referring to that Company do you mean the defendant company?

A. The American Trading Company, New York.”

2d.

That the said Court erred in overruling the objections of counsel for plaintiff in error to the following testimony of the witness, A. T. Steele: (Pages 6-8 Bill of Exceptions.)

Q. Is this agreement? (Handing witness Plaintiff's Exhibit “C.”)

A. Yes, sir, this is the letter—the agreement that was executed between Mr. D. H. Blake, Vice-president and General Manager of the far east for the American Trading Company, and myself. Plaintiff's Exhibit “C” offered in evidence.

Mr. BRYAN.—I object on the ground that this exhibit is irrelevant and immaterial to the case.

The COURT.—Objection overruled.

Third Exception.

To which ruling of the Court the defendant then and there excepted.

Q. Now, in accordance with that agreement did you go to work for the American Trading Company in Tokyo? A. Yes, sir.

Q. And how long did you work there?

A. From the date of that agreement, August 27, 1918, to the time I handed over charge to the man who was replaced, Mr. Boyd, on May 3d, 1919. When I completed handing over charge to Mr. Boyd, [268] whose position I occupied during that time.

Q. Now, why were your services terminated at that time?

A. You mean my services in the Tokyo office?

Q. Your services with the defendant company?

A. They were terminated by my handing over charge to Mr. Boyd, whose position I was occupying pro tem.

Q. Yes, but why did you hand over the position to Mr. Boyd?

A. Because that was according to the terms of the agreement I had with Mr. Blake.

Q. Did you then proceed to Shanghai as under your original agreement? A. No.

Q. Why not?

A. Because Mr. Blake advised me by letter on the 19th of March, I think, that Mr. Burns, the Shanghai agent, had made arrangements with Mr.

Manley to remain in the employ of the company and he did not want me to come to Shanghai. Mr. Burns did not want me to come to Shanghai.

Q. Were you ready and willing and did you want to come to Shanghai and take up that employment? A. Yes, sir.

Mr. BRYAN.—I object.

The COURT.—Objection overruled.

Fourth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. I hand you Plaintiff's Exhibit "D," and ask if [269] that is the letter you referred to in answer to my last question.

A. Yes, sir. That is the letter that gave me the intimation that Mr. Burns had made arrangements to retain Mr. Manley and he didn't want me to proceed to Shanghai. Yes, sir, that is the letter.

Q. Now, after receiving that letter what did you do?

A. I discussed the matter of my agreement with Mr. Blake.

Q. And was there anything done in regard to that?

A. He wrote a letter to Mr. Ward about it."

3d.

That the said Court erred in overruling objections of counsel for plaintiff in error to the introduction in evidence at the trial of said cause, of the following letter, being plaintiff's exhibit C and in admitting the same in evidence.

“Tokyo, Aug. 27th, 1918.

A. Tilton Steele, Esq.,

Present.

Dear Sir:

We beg to confirm our conversation of yesterday's date with reference to your temporary employment in this office.

Compensation: The compensation provided for in your original contract made with Mr. L. A. Ward, Vice-president and Manager of the American Trading Company of the Pacific Coast on May 27th calls for a salary of \$250.00 Gold per month, or a salary of not less than \$10,000.00 Gold for the three years' period of your contract. We have arranged that you are to receive \$250.00 Gold at exchange 50, which is the equivalent of Yen 500.00 per month together with an additional allowance of Yen 150.00 per month to cover any additional expenses which you may be put to owing to the change in your plans. The two items above mentioned will make a total of Yen 650.00 per month which you will receive while you are in employ of our Tokyo office.

Term of Employment: As explained to you, [270] we wish you to remain in Tokyo during the time that Mr. Boyd is absent on holiday which we estimate will be about six months. This time will, of course, apply on your three years' term as mentioned in your original contract.

Travelling Expenses. Any legitimate travelling expenses incurred by you on behalf of the company will be refunded to you.

General: It is understood between us that this

temporary arrangement does not prejudice any verbal understanding which you may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

We remain, Dear Sir,

Yours very truly,

AMERICAN TRADING COMPANY.

(Sgd.) D. H. BLAKE,

Vice-president."

4th.

That said Court erred in considering Plaintiff's Exhibit "D" as part of the evidence in the case, the same having never been offered by the plaintiff as evidence, nor received by the Court as such, which said exhibit is as follows:

"Tokyo, March 19, 1919.

A. Tilton Steele, Esq.,

American Trading Co.,

Tokyo.

Dear Sir:

With reference to our conversation of a few days ago, we beg to confirm what we told you at that time, to the effect that we had received word from Mr. Burns, Agent of our Shanghai office, that as he had made satisfactory arrangements with Mr. Manley to remain with the Company, he did not want you to come to Shanghai.

We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April, we shall have no further use for your services here.

We cannot say what your recourse will be under

your contract, but, as intimated the other day, the writer will be glad to render you such assistance as he can in order to effect a mutually satisfactory settlement,—but before anything can [271] be done in this connection it will be necessary for you to make some suggestions in the premises.

We remain,

Yours very truly,

AMERICAN TRADING COMPANY.

(Sgd.) D. H. BLAKE,

Vice-president.”

5th.

That the said Court erred in overruling the objections of counsel for plaintiff in error to the following testimony of the witness, A. T. Steele: (Page 9 to 12 of Bill of Exceptions).

A. We discussed my duties as chief accountant Shanghai office, and I told Mr. Burns that nobody in the office knew at exactly what rate of exchange I would get my salary and I wanted that settled before I left.

Mr. BRYAN.—I object.

The COURT.—Objection overruled.

Fifth Exception.

To which ruling of the Court the defendant then and there excepted.

Q. Was there anything more said at that time?

A. Yes, I asked Mr. Burns specifically to settle with me at what rate of exchange in taels or Mexican dollars I should be paid my salary, before I left San Francisco.

Q. What did Mr. Burns reply to that?

A. He said it was the—first I said that I understood that the usual rate of exchange was two Mexican dollars to one gold, and I would not accept anything less than that. Then Mr. Burns [272] said our office does even better than that, our special rate is 55 cents gold to the tael and all our American employees get their salaries on that basis.

Q. Was any memorandum made at that time of that conversation?

A. Then I asked Mr. Burns what that would amount to in Mexican dollars and he turned to a portfolio he carried and brought out a payroll sheet of the Company's Shanghai office and referred to it, and I happened to have some paper in my hands and he didn't have any loose sheets handy and I handed it to him to figure it out how much it would amount to at the rate of 72 taels cents for one Mexican dollar.

Q. Was there any memorandum made in writing at that time?

A. He figured out what my salary of \$250.00 gold dollars would amount to and it amounted to 632 Mexican dollars.

Q. Answer my question, please.

A. Yes, there was.

Q. Have you got that memorandum?

A. It is among those papers. ,

Q. You find it, please. I hand you Plaintiff's Exhibit "E" and ask if that is the memorandum made at that time.

A. Yes, Mr. Burns' own figures. He figured it out and said the amount was—he figured it out that

my salary would amount to 632 Mexican dollars.

Q. And whose writing is that? [273]

A. Mr. Burns'. Mr. Burns figured it out himself in pencil.

Q. Did you see him?

A. Yes, it was right there at that interview.

Exhibit "E" offered in evidence.

Q. In accordance with the terms of your contract with the defendant company you were to receive a salary of not less than 250 gold dollars a month. For how many months during the term of this agreement did you receive that salary?

A. I received that salary for nine months in Tokyo, at the rate of 500 Yen a month. Two yen to one gold dollar.

Q. And—

A. And I was given an extra allowance of \$150 a month as a compensation for the difference in exchange between 632 Mex. dollars, and I pointed out to Mr. Blake that my salary would be 632 Mexican dollars and he said he could not pay me more than 650 because Mr. Boyd, chief accountant of the Tokyo office, was getting that and that was the most he could pay me, and I accepted it.

6th.

That the said Court erred in overruling and denying the motion for judgment on the pleadings made by counsel for plaintiff in error at the close of the defendant in errors case, and before the plaintiff in error had called any evidence, upon the following grounds:

First. That the defendant in error in its reply

failed to deny allegation ten of plaintiff in errors [274] amended answer, thereby admitting that the services rendered by the defendant in error to the plaintiff in error were unsatisfactory, and that the defendant in error, in the performance of his duties, was inefficient, negligent and insubordinate to his superiors.

Second:—That, according to the procedure in force in the United States Court for China, all allegations of new matter made in the answer and not denied in the reply are considered as being admitted.

7th.

That the said court erred in not ruling upon the motion for judgment on the pleadings made by counsel for plaintiff in error at the time the same was made, and in the manner of its ruling, i. e., ruling reserved, and in permitting the case to proceed without first ruling upon said motion, and in not ruling upon said motion, before final judgment was rendered.

8th.

That the said court erred in the manner of its ruling, i. e. ruling reserved to the introduction in evidence of plaintiff in errors exhibits, 2, 5, 6, 8, 3 and 10 and in permitting said trial to proceed without first ruling upon the admissibility in evidence of said exhibits and in not ruling upon the admissibility in evidence of said exhibits before it rendered final judgment. Said exhibits are as follows:

Defendant's Exhibit No. 2.

May 10th, 1919.

Honorable William Potter,
c/o American Embassy,
Tokyo.

Dear Sir:

We acknowledge your letter of the 2nd inst., and wish to express our appreciation of your willingness [275] to arbitrate the differences which have arisen between our company and Mr. Steele. We further desire to record our appreciation of the good offices of his Excellency Ambassador Morris, which have resulted in your undertaking this task.

In the beginning we wish to explain that it has never been our intention to evade our responsibilities or disregard Mr. Steele's rights under his contract.

The correspondence submitted will show you that Mr. Steele was originally employed on behalf of our Shanghai office, but later on he was held at Toyko to assume, temporarily, the duties of Mr. Boyd, while the latter took a short holiday.

In the meantime it developed that Mr. Steele's services were not required at Shanghai, and we at once began negotiating with him for the cancellation of his contract. In view of the fact that he had been originally employed by Mr. Ward in San Francisco, who was a personal friend of his, we recommended that the matter should be referred to him for settlement, and we had every reason to believe that this arrangement would be entirely satisfactory.

You will note that we gave Mr. Steele written notice that his services with this office would terminate on Mr. Boyd's return to Tokyo. He took no exception to this arrangement at the time, and in fact as late as April 29th, he told the writer and Mr. Mauger, the agent of the Tokyo office, that he would turn over his duties to Mr. Boyd the following day. This, however, he failed to do notwithstanding our repeated requests. Owing to his arbitrary and unwarranted actions our business was seriously interfered with for several days.

As an instance of the inconvenience we were subjected to we would say that our accountant's safe remained closed for two days, during which time we were deprived of the use of our securities and other important documents.

During this time we had agreed to Mr. Steele's demand for an arbitration so we contend that there was no ground for his arbitrary and illegal action.

We might point out that Mr. Steele's rights under his contract would have been just as secure without this "hold up" and we feel sure you will agree with this statement.

We would finally put on record that it was not until the 8th inst. that Mr. Steele handed over the last of the keys which were in his possession.

We now come to the character of Mr. Steele's work while he was in the office. He adopted the attitude from the start that our system of bookkeeping was all wrong, and this of course led to more or less friction and unpleasantness.

During the first few months of his stay here his attendance on the office was so irregular as to cause great hindrance to our business. It very frequently happened that he did not turn up at the office until 9:30 o'clock, sometimes 10 o'clock, or even later—this in spite of the fact that a notice is posted that our office hours are from 9 o'clock.

If required we can offer numerous witnesses to prove the correctness of the above statements.

On three occasions the writer called Mr. [276] Steele to task for his disregard of our office rules, and during one of these interviews we told him that if he found it impossible to comply with our regulations he had better return to San Francisco. Notwithstanding our repeated admonitions he still persisted in ignoring the office rules, and we submit that on this point alone we could have found sufficient justification for cancelling his contract.

We now wish to discuss Mr. Steele's unauthorized correspondence on affairs pertaining to our office.

We enclose copies of his letters of April 17th and April 24th addressed to Mr. L. A. Ward of San Francisco.

These copies are certified to us by Miss Paul who was our stenographer at the time they were written, but who has since left our employ. She is, however, still in Yokohama and would be willing to answer any questions if called upon to do so.

Mr. Steele told the writer that he had addressed certain letters to Mr. Ward, but never mentioned their character; he also intimated that he had taken

an extra copy for our files, but at the same time never offered to hand them over.

We now have every reason to believe that his apparent willingness that we should see this correspondence was pure camouflage as it must be apparent to anyone that had we seen the letter of April 24th, it would never have left our office.

Since the beginning of this month we have repeatedly asked Mr. Steele, both verbally and in writing (see copy of our letter of May 6th), for copies of this correspondence with Mr. Ward, but up to this writing he has failed to comply.

We might explain that the addressee of these letters is the Vice-president and General Manager of the American Trading Company (Pacific Coast), a Company with which we are associated, but which is a separate and distinct organization.

Mr. Ward has no jurisdiction over this office and is not even an employee of the American Trading Company proper.

We do not even intimate that Mr. Ward was a party to this clandestine correspondence and we even believe that he will disavow any connection with it.

We do not know how many more letters were written or the nature of their contents, but the opening paragraph of the letter of April 17th furnishes proof that there were others. This paragraph also shows that Mr. Steele was keeping Mr. Ward advised of "developments."

We should also like to call your attention to the first paragraph of the letter of April 24th in sup-

port of our statement that we thought Mr. Steele was agreeable to handing over his duties to Mr. Boyd on the latter's return.

We do not undertake to deal in detail with the balance of the subject matter of this letter, but we might remark that against Mr. Steele's eight months service in the Company the men who he subjects to such severe criticisms and innuendoes have the following records:

Mr. Blake, 23 years; Mr. Mauger, 20 years; Mr. Boyd, 17 years, and Mr. Moss, 9 years.

We would further mention that Mr. Mauger previous [277] to coming to Tokyo, was chief accountant of our company in New York for a number of years, and is, presumably, as capable a man on books as Mr. Steele, and also has the welfare of the Company quite as much at heart.

We submit that Mr. Steele in carrying on such correspondence was practicing both deception and treachery, and on either count he has committed an unpardonable offense.

If he acted with a realization of what he was doing then certainly he has no excuse to offer, but on the other hand if he pleads ignorance, he convicts himself of being deficient in the most elementary principals of business.

It seems incredible that any man endowed with ordinary intelligence could *do* abuse the confidence of his employers as Mr. Steele has done in carrying on this correspondence.

We would respectfully submit for your consideration the following points:

1. Would Mr. Steele have been justified in writing such a letter as that of April 24th, even to the head office of the Company, without the knowledge and consent of his superior officer?

2. Assuming for argument's sake that your answer to the above is in the affirmative, would he have been justified in sending the same letter to a man who had no connection whatever with the office which employed him?

3. Having committed this offense has he not proven himself irresponsible and untrustworthy?

4. In view of all the other facts, would we not have had good and sufficient grounds for dismissing him from our office?

In conclusion we have to say that under ordinary circumstances we would have had no other thought than to treat Mr. Steele liberally, but in view of the unsatisfactory character of his work and the treachery he has displayed toward his office and employers, we now prefer that the case be settled entirely on its merits.

Respectfully submitting the above, and with renewed thanks for your kind assistance, we remain,

Yours very truly,

Defendant's Exhibit No. 5.

April 24, 1919.

Mr. A. L. Ward,

Vice-Pres. & Gen. Mgr.,

American Trading Co. (Pacific Coast)

San Francisco.

My dear Mr. Ward:

I am just informed that Mr. Boyd [278] will

be here on Monday next, and I shall have to hand over charge of the account department to him on the first of May.

I expect the auditor's report in any day now, and judging from what Mr. Bell has told me I believe that his firm will not certify to the correctness of the account except in a modified form unless and until a thorough investigation of the accounts of the building department has enabled him to verify certain stock balance carried forward to 1919.

Such an investigation would entail a great deal of time, labor and expense, and I have my doubts as to whether Mr. Blake would deem it advisable to incur this expense, particularly at this time, when he is busy organizing a new company to take care of the Truscon Building material interests as a separate concern.

I fully realize the inexpediency of going into the accounts of our building department at this time, as any trouble which may arise out of the investigation would perhaps prejudice the interests of the company in this new enterprise.

Be that as it may, I am sure that were the actual facts in their entirety relating to the accounts of the building department known to the head office they would agree with me that an investigation was very necessary. As Mr. Blake remarked to me when I called his attention to the fact that the Kahn materials stock had never been verified and that account sales were made up and passed into our books upon the O. K. of Mr. Moss, that Mr. Moss practically fixed a profit on each job and

thereby his commission as well, the accountant having no authority to question or to supervise his figures, that "such a situation would be positively alarming" were it not for the utmost confidence he had in Mr. Moss' integrity and knowledge of the business.

I have not completed my special report to Mr. Blake on the subject of the existing conditions in the accounting department, and I feel from the way he has treated my suggestions in regards to collections that it would be labor lost were I to continue my efforts in that direction, and I am the more led to this conclusion after a conversation which I had recently with Mauger. This being so, I shall probably go to Shanghai and shall await your advice there instead of here, unless of course after Mr. Boyd arrival here I see a disposition on the part of Mr. Blake to carry out my suggestions to the end of utilizing my services in the Tokyo office for at least the period covered by my contract with the Company.

That the Tokyo accounting department needs to be reorganized upon a modern basis is admitted by Mauger, who says in this connection that he and Boyd have been talking about it ever since he came from the Philippines in 1917, but from the time I have been here both Mr. Blake's and his attitude have been to defer any action to the end of improving conditions in the accounting department until Mr. Boyd got back, and now that Mr. Boyd will soon be here I expect that Mr. Blake will tell me that these improvements can be affected by Mauger and

Boyd, without having another [279] high-priced accountant to collaborate with them. Upon this point I shall have something to say, and it is possible that what I will say will not be entirely acceptable to Mr. Blake or to Messrs. Mauger and Boyd—but I want to assure you that whatever I might say or do in this connection will be prompted by only one thought, actuated by one *one* motive, that it is better serve and safeguard the interests of the company than they have been in the past.

Each department there appears to have a separate organization as if those departments were distinct entities or concerns subsidiary to the parent organization in New York but operating independently, as it were, of each other, the accountant department of the company being used merely to record their transactions to receive and disburse monies, borrow funds to carry on the business, to retire their drafts, to investigate the financial standing of their customers and to hold in their behalf the securities deposited by these customers, without, however, any right, title or authority to look into the affairs of their respective departments. This arrangement often causes confusion between the accountant department and the other departments.

For example, the other day a check for about nine thousand yen came in by registered mail, was handed over by me in the usual course to our credit man, who went with it to the department where it belonged to get the requisite paper memos for purposes of record and receipting, and the check was duly deposited on that day. Two weeks later

the head of that department comes in to me and says that in response to his request a settlement from the company he had been informed that payment had already been made and he did not know anything about it.

This sort of thing happens very frequently due to the fact that there is not proper co-ordination of functions between the sales managers, departments and the accountant, and too much duplication of records, too much unnecessary clerical work done by all departments concerned, when the accountant's department, if properly organized could handle everything to the entire satisfaction of all departments concerned.

I am merely touching upon the general condition existing. To go into details with you would be a voluminous task and furthermore would necessitate your being here to see things in operation, and if you were here you or any keen up-to-date American business man familiar with American methods would be forced to come to the same conclusion as I have.

Hoping to hear from you in answer to my letters of last month before I leave here, which will be by the first boat I can get passage on to Shanghai, I remain,

Very sincerely yours,

I hereby certify that the foregoing letter is an exact copy as indicated by Mr. Steele and as taken from my stenographic notes.

Witness:

[280]

Defendant's Exhibit No. 6.

April 17, 1919.

Mr. A. L. Ward,

Vice-President and General Manager,

American Trading Co. (Pacific Coast)

San Francisco.

Mr. dear Mr. Ward:

Since addressing you last there have been no new developments to advise you of.

The conference with Messrs. Bell & Taylor took place some days ago, and they are apparently still considering matters, for their report and statements are not forthcoming as yet. As soon as they come to hand and Mr. Blake is made aware of the actual condition existing I shall make my special report to him and await his decision.

Perhaps the enclosed clipping may be of some interest to you and I might mention that I am doing considerable writing for various newspapers and magazines, both in California and here in Japan, and I have spoken to Mr. Blake on the subject and he thinks that there would be no objection to my doing this, provided I did not sign my name to those writings—and I have agreed with him that it would be advisable in view of the fact that the ideas I have expressed and shall express while I am here in the Orient may prove very unpalatable to the average oriental man.

As regards Mr. Boyd's return, nobody here knows just when he is coming back, but I suppose before he leaves San Francisco, he will see you and you will know exactly when he is leaving.

Awaiting your advice with much interest, I remain,

Yours very sincerely,

I hereby certify that the above is an exact copy of the letter dictated to me by Mr. Steele, as taken from my stenographic notes.

Defendant's Exhibit No. 8.

May 6, 1919.

A. T. Steele, Esq.,

5 Enokizaka-machi, Akasaka,
Tokyo.

Dear Sir:

I shall be obliged if you will kindly furnish me with certified copies of all letters which you have addressed to Mr. Ward, during the time you have been connected with this office, which in any way refer to the business of the office. [281]

Your prompt compliance with this request will no doubt hasten the arbitration of our differences, and as that would no doubt be in keeping with your ideas I hope you will not delay complying with my request.

I would also be glad to have you state to me in writing whether or not you sent to Mr. Ward a copy of our last auditor's report.

I have again to remind you that you have failed to turn over a number of keys which are urgently required by us. I understand that the desk in our office for which you hold the key contains only your private belongings, but I would call to your attention that this fact does not offer any excuse for your

retaining possession of our property. Kindly let us have all of our keys at once.

I enclose herewith an account current showing that you have a debit balance of Yen 541.21, on our books, which we request that you pay in at once. I remain,

Yours very truly,

Defendant's Exhibit No. 3.

Tokyo, March 19, 1919.

D. H. Blake, Esq.,

Vice-Pres. & Gen. Manager,

American Trading Co.,

Tokyo.

Dear Sir:

Re My Three Year Contract with the Co.

Replying to your letter of yesterday's date, I beg to confirm the understanding we came to at the close of my interview with your good self yesterday on the above subject.

That I did not feel disposed to come to a final decision on the matter without consulting Mr. Ward, who, with the knowledge and assent of Mr. Burns, made the above-mentioned contract with me.

While I deeply appreciated your offer of mediation and was sincerely confident of receiving the fullest consideration at your hands, I could not make up my mind on the subject without first hearing from Mr. Ward.

Your concurrence with me on this point made the situation so much easier for all concerned, and I am sure I left the impression with you that I had concluded that I was determined in fact to have

this unfortunate affair with the company adjusted in an amicable rather than a contentious spirit.

Since writing the above I have received [282] a copy of your letter to Mr. Ward No. 46F, which was addressed to him by you in keeping with our conversation.

Would you permit me to make clear a passage in that letter which is somewhat ambiguous, I refer to the part wherein you say that Mr. Steele is not altogether satisfied with life in Japan and that he is not sorry that his stay here is not to be postponed.”

This may be construed by Mr. Ward to mean that I am not in favor of serving the Company in Japan. With your kind permission I would like to state briefly that I have already told you, in this connection, that I had reference to my *business life* in Japan, as a member of the Tokyo organization of the Company *under existing conditions*. Those conditions, as you are aware, tend to make the accountant of the Tokyo office virtually, if not verbally, subordinate in matters of accounting to the heads of the other departments, import, engineering and building, a situation which in my opinion no self-respecting experienced American Accountant could endure for any great length of time.

However, this is not the time for details—suffice it to say, and I sincerely trust that you will take what I say in good part, that in matters relating to accounts and collections (not to mention anything else) our office needs to be thoroughly reconstructed, i. e., reorganized along modern lines, to meet the needs and requirements of the post-war competition

that other large organizations like ours in Japan are preparing for.

Of course, Japan is not America—we all realize that, and local conditions will have to be met, but the science, of accounting, as practiced in the United States to-day, is based on “common-sense” and an expert accountant trained in the United States school of practical accounting, no matter where he goes or what business he is engaged to serve, may safely be trusted to find a practical solution to every problem that arises in his line—if *he can be given the requisite authority and encouragement to operate in his particular field of work.*

I trust my special report when it is completed, will prove of sufficient merit to receive your endorsement, and I need hardly add in this connection that the approval of a gentleman of your wide business grasp and experience would be highly valued by me.

Very respectfully yours,
(Sgd.) A. TILTON STEELE. [283]

Defendant's Exhibit No. 10.

March 19, 1919.
Letter No. 46-F.

L. A. Ward, Esq.,

Vice-president American Trading Co. (Pacific Coast).

San Francisco, Cal.

Dear Mr. Ward:

I enclose herewith copy of letter which I have to-day addressed to Mr. Steele.

You will perhaps not be prepared for the news

that Mr. Steele is not going to Shanghai to our office at that port. I presume that when Mr. Burns went through San Francisco this matter was not discussed with you, because Mr. Burns thought at that time that Mr. Steele would replace Mr. Manley after the return of Mr. Boyd to Tokyo from his short holiday. In the meantime Mr. Burns has made satisfactory arrangements with Mr. Manley and desires to continue his services with the Company—and that being the case, he has no position for Mr. Steele.

I had explained the whole situation to Mr. Steele and I think he fully understands the reason for the action which has been taken. I am pleased to say that he has accepted the situation very gracefully indeed and is quite willing to come to a friendly understanding with the American Trading Company.

I have suggested that in view of the fact that his contract was made with your good self, he return to San Francisco in due course and come to a settlement with you, and he has been very agreeable to this suggestion.

I think I am correct in saying that Mr. Steele is not altogether satisfied with life in the Far East, and that he is not sorry that his stay here is not to be prolonged even to the extent of the contract which he entered into. He is, however desirous of obtaining some kind of a Government appointment in India, and he tells me that you were fully acquainted with his wishes in this respect at the time you entered into negotiations with him on behalf of

the American Trading Company. He would like us to render him such assistance as we can to enable him to get such an appointment, and I have told him that we would provide him with such letters of recommendation as we could, but beyond that I cannot see that we can be of any material assistance. However, I hope that you will do anything that you are able to do in his behalf.

I cannot say at this writing just when Mr. Steele will return to San Francisco, but I am expecting that Mr. Boyd will be back here not later than the end of April, and in that case probably Mr. Steele could get away from here sometime during May.

I am giving Mr. Steele a copy of this letter, I remain,

Very truly yours, [284]

Enclosure.

P. S. Since writing the above, Mr. Steele has called my attention to the fact that my remarks with reference to his not being satisfied with life in the Far East are not exactly in accordance with facts. His proposition is that he is not pleased with life in Japan, but that as far as China is concerned he believes that he would have been entirely satisfied to have completed his contract in that Country, D. H. B.

9th.

That the said court erred in permitting the following testimony of the witness, A. T. Steele, to be admitted in evidence over objections of counsel for plaintiff in error and in its manner of ruling, i. e., ruling reserved, and in not ruling upon said evi-

dence, and in permitting said trial to proceed without first ruling upon said objections and in not ruling upon said objections before rendering final judgment; (Page 37 to 44 of Bill of Exceptions).

“Q. What was the character of the actual services which you performed for the American Trading Company in Tokyo?

Mr. BRYAN.—I object to all evidence attempting to show the character of the defendant’s services rendered at Tokyo, that fact having already been determined on the pleadings.

The COURT.—Ruling reserved.

Eighth Exception.

To which ruling of the court the defendant then and there excepted.

Q. What is the character of the services you performed in the Tokyo office? That class of work did you do?

A. I was practically manager of the financial department. [285]

Attended to the credits and collections and I was manager of the accounting department of the American Trading Company, Tokyo, and was head of that department with a number of men under me who did the bookkeeping and handled the details of the accounts of the company, and took care of the records and everything.

Q. Did your duties as performed involve the exercise of—

Mr. BRYAN.—I wish a general exception to be noted to all such evidence.

The COURT.—Ruling reserved.

Q. Were your services performed in the Tokyo office, did they involve any discretion?

A. In the capacity of manager a great deal of discretion was vested in me.

Q. During the time you served there in your exercise of that discretion did you at any time have occasion to question some of the accounts of other departments which were submitted to you as chief accountant?

A. Yes, sir, I had some occasions of that nature.

Q. Now you say you did question some accounts which were submitted to you for your approval?

A. Yes, sir.

Q. What was your reason?

Mr. BRYAN.—I object on the ground that this evidence is irrelevant, immaterial and prejudicial to the case of the defendant, and further that this fact has already been determined upon the pleadings.

The COURT.—Objection overruled. [286]

Ninth Exception.

To which ruling of the court the defendant then and there took exception.

Q. Why did you object to some of the accounts?

A. Because I deemed myself responsible for the accuracy of the accounts of my department and certain statements were put before me in the capacity of manager of my department for endorsement and I declined to endorse anything that was not right.

Q. (The COURT.) Put before you by whom?

A. By Mr. Moss, for example, the building department manager, was one.

Q. Any others besides Mr. Moss?

A. No, Mr. Moss, the manager of the building department was the only man whose statements I questioned and whose handling of his department I didn't want to endorse, as chief accountant.

Q. Just what do you mean, endorse?

A. He wanted to pass through our department incorrect amounts which he was not entitled to.

Mr. BRYAN.—I object to all evidence tending to show the character of the plaintiff's services in Tokyo, that fact having already been determined upon the pleadings.

The COURT.—Ruling reserved. The evidence will not be considered if it appears that you are entitled to judgment on the pleadings.

Tenth Exception.

To which ruling of the court the defendant then and there excepted. [287]

Q. By endorsement, just explain what you mean. Do you mean you had to sign these accounts as correct?

A. I had to O. K. those incorrect statements.

Q. After you had O. K'd the statements were they sent to the head office in New York?

A. Yes, sir, and I didn't want to be identified with statements that were not absolutely correct and I declined to put my signature to them.

Q. When incidents like that occurred, did you refer them to Mr. Blake?

A. Yes, sir, on more than one occasion the differences which came up between the building department and my department.

Q. At any time while you were employed there

did Mr. Blake, either directly or indirectly, criticise you?

A. Not a word of criticism as long as I was there, until April 30th.

Q. And the 30th of April was more than a month after you were dismissed?

A. Yes, after I wrote him a letter.

Q. And during the course of your employment there did you make recommendations which, in your judgment, would tend to improve the system of accounts? A. I certainly did.

Q. Did you submit those to Mr. Blake?

A. Yes, sir, in the form of a letter.

Q. Did Mr. Blake adopt them? A. No, sir.

Q. When you submitted those matters which you [288] regarded would improve the system did Mr. Blake take exception to your submitting them?

A. No, indeed, he expressed his approval of my recommendations but said—

Q. At any time from the time you entered the employ of the Tokyo office of the American Trading Company up to the date you were dismissed—

A. Do you mean March 19th or April—

Q. When you actually got notice that your services were no longer required, had Mr. Blake or any other person in authority in the Tokyo office, informed you that your services were not satisfactory? Between the time you started work at the Tokyo office and the time you received notice that your services were no longer required?

A. Not a word from anybody to that effect.

Q. Did Mr. Blake, or any man in charge of the

Tokyo office, of the American Trading Company, inform you that they considered your conduct in-subordinate there?

A. No, sir, not a word to that effect.

Q. Did anyone in authority in that office, anyone superior to you, ever criticise you or tell you you were not keeping proper office hours?

A. No. On one or two occasions Mr. Blake saw me in the hall leading to my office and he had already come in, I think it was about a quarter of an hour or twenty minutes to nine, and he said, "Well, you are late" and I said, "Yes, but it was on the Company's business."

Q. Now as a matter of fact during the period you served there did you serve the full extent of [289] the office period?

A. More than that. I didn't go to tiffin during the lunch hour of twelve to two. I was the only person in the office during the lunch period.

Q. About how long is that period?

A. From twelve to two. And during an illness I attended.

Q. You were ill?

A. Yes. Against the Doctor's advice, during the flu scare there. He advised me to stay at home and I even attended the office during my illness trying to do my duty by the Company.

Q. When was the first time it was ever brought to your attention that Mr. Blake or anyone else in authority over you, were dissatisfied with your services?

A. The point of dissatisfaction was never men-

tioned to me by Mr. Blake.

Q. Never mentioned?

A. Never. Not by anybody in the office.

Q. When was the first time that any claim that you had been insubordinate mentioned to you?

A. When I read Mr. Manley's affidavit was the first time.

Q. When you read it in this court?

A. Yes, sir, the first time that I heard something about that.

Q. Now when was the first time that you were informed you were considered a disturber of the discipline of the office?

A. When I read those affidavits. Nobody ever told me that while I was there in Tokyo. [290]

Q. Now when you were dismissed by Mr. Blake were you ever informed that your services would not be required in Shanghai because of inefficiency or—

A. No, sir, neither verbally nor in writing did he ever say so.

Q. What was the reason?

A. The reason was that Mr. Burns had made arrangements with Mr. Manley to continue in the employ of the Company and as I was to replace Mr. Manley there was no need for me to go to Shanghai as I was not needed here.

Q. When was the first time you had any friction with Mr. Blake?

A. The first time was on the 30th of April.

Q. And you were dismissed on the 19th of March?

A. Yes, sir.

Q. And what gave rise to that friction?

A. I brought a Cashier order with me for one thousand yen.

Q. You presented it to Mr. Blake?

A. I presented it to Mr. Blake because the manager of the Tokyo office declined to O. K. it without Mr. Blake's endorsement.

A. I had received a letter from Mr. Ward, or a cablegram from Mr. Ward to the effect that I was to await advice in Tokyo and that was the understanding, you see.

Q. At the time you presented this order?

A. I wanted to await advices from Mr. Ward in Shanghai instead of Tokyo as they didn't want me there.

Q. You mean by that that you presented this order [291] for funds to proceed to Shanghai?

A. Yes, and to wait there. I wanted about a month's salary. I figured about a thousand yen, and await advice from Mr. Ward, in regard to the balance of my contract.

Q. And that is the first time, you say, any friction occurred?

A. Yes, and he got annoyed.

Mr. BRYAN.—I renew my previous exception.

Noted.

10th.

That the said court erred in overruling the objections of counsel for plaintiff in error to the following testimony of the witness, A. T. Steele: (Bill of Exceptions 44-46).

Q. Sometime subsequent to your dismissal by

Mr. Blake, you entered into negotiations with Mr. Blake to arbitrate your differences about this matter? A. Yes, sir.

Q. Now, how were those negotiations conducted? Verbally or in writing?

Mr. BRYAN.—I object on the ground that the agreement to arbitrate by the parties, as set forth and admitted in the pleadings, cannot be changed by extraneous evidence.

The COURT.—Objection overruled.

Eleventh Exception.

To which ruling of the court the defendant then and there excepted.

Q. Now, Mr. Steele, when negotiations were arranged for this arbitration were they conducted between you and Mr. Blake by correspondence? [292]

A. Yes, sir.

Q. (Handing witness Plaintiff's Exhibit F) Now Mr. Steele, take a look at that and tell us what it is?

A. This is a copy of a letter that I wrote to Mr. Blake, the Vice president and General Manager of the American Trading Company.

Q. This is a copy of a letter you wrote to Mr. Blake?

A. Yes, embodying the understanding between Mr. Blake and I that—

Q. This is a press copy of your own hand writing?

A. Yes, sir.

Q. I will read this letter.

Mr. BRYAN.—I object on the ground that this letter is not admissible in evidence because the agreement to arbitrate, as set forth and admitted in the

pleadings, cannot be changed by extraneous evidence.

The COURT.—Objection overruled.

Twelfth Exception.

To which ruling of the court the defendant then and there excepted.

Q. This is a letter you sent dated May 2d, 1919, addressed to Mr. Ward (Read letter.)

Handing witness Plaintiff's Exhibit "G."

Q. And what is this?

A. This is Mr. Blake's reply to my letter confirming the subject matter to be arbitrated.

Q. You are familiar with Mr. Blake's signature?

A. Yes, sir. He signed it as Vice President of the Company. [293]

Mr. BRYAN.—I object on the ground that this letter is not admissible in evidence on account of the fact that the agreement to arbitrate as set forth and admitted in the pleadings cannot be changed by extraneous evidence.

The COURT.—Objection overruled.

Thirteenth Exception.

To which ruling of the court the defendant then and there excepted.

Q. Now Mr. Steele, after the exchange of these letters were these letters submitted to the arbitrator, Mr. Potter?

A. Yes, sometime later.

11th.

That said court erred in permitting plaintiff's counsel to read a letter, known as Plaintiff's Exhibit "F," over defendant's objection, the same

never having been offered nor received as evidence by the court, and in considering said letter, known as Plaintiff's Exhibit "F," as evidence. Exhibit "F" is as follows:

Plaintiff's Exhibit "F."

May 2d, 1919.

Mr. D. H. Blake,
Vice President & General Manager,
American Trading Co.,
Present.

Dear Sir:

With further reference to the matter of giving up my office and handing over charge of my department to Mr. Boyd, which you wish me to do immediately notwithstanding the fact that I am entitled to a month's written notice to that effect, under the Japanese law which you threaten to invoke, to compel me to do so, I am perfectly willing to hand over the keys of the safe, to Mr. Boyd, after I have duly accounted for the notes, securities, etc., which are in that safe, if it be distinctly understood between us in writing that in my doing so my rights and interests under my original agreement with the company made with Mr. Ward, and ratified by Mr. Burns, and later confirmed by you in [294] your letter of appointment dated August 27, 1918, are not in any way prejudiced thereby.

It must also be distinctly understood between us in writing in accordance with the terms of my understanding with our Ambassador, the Hon. Mr. Roland Morris, reached in my conversation with him at the Embassy yesterday, that we are both to agree and to

state such an agreement in writing to him, assenting to the arbitration of the Hon. Mr. Potter, whose award must be considered as binding to both parties in the matter of the main issue involved in the case, viz., the amount of compensation to be paid to me here at the Tokyo office of the Company in full settlement of all my claims against the Company under the the agreements I have with the Company.

Kindly confirm this understanding and oblige,
(Sgd.) A. T. STEELE.
12th.

That said court erred in considering defendant in error's exhibit "G" as part of the evidence, said exhibit never having been offered nor received as evidence. Said Exhibit "G" is as follows:

Plaintiff's Exhibit G.

Tokyo, May 2, 1919.

A. T. Steele,
Tokyo.

Dear Sir:

I am in receipt of your letter of even date, and in reply thereto would state that in giving up your duties and handing over charge of the Accountant Department to Mr. Boyd, as requested by me, both verbally and in writing, your rights and interests under your original agreement with the Company, or my letter of August 27th, 1918 will not be prejudiced in any way.

With reference to the Arbitration of our differences, I confirm my previously expressed willingness to acquiesce in the suggestion made by H. E. Ambassador Morris, that the Arbitration should be

placed in the hands of the Honorable Mr. Potter, who is at present in Tokyo, and that his award should be binding on both parties, and shall be settled in Tokyo.

I remain,

Yours very truly,

AMERICAN TRADING COMPANY,

D. H. BLAKE,

Vice President. [295]

13th.

That the said court erred in overruling the motion made by counsel for plaintiff in error at the conclusion of the evidence for the taking of the depositions on commission of Mr. Mauger and Mr. Moss, regarding the system of doing business at the Tokyo office, upon the following grounds:

First. That the defendant was taken by surprise at the testimony of the witness, A. T. Steele, when he testified as to the irregularities committed by the said Mr. Mauger and Mr. Moss.

Second. That said defendant was unable to produce any evidence to refute the testimony of the witness, A. T. Steele without the taking of said depositions.

Third. That the court, by overruling said motion, unduly prejudiced the case of the plaintiff in error.

14th.

That said court erred in not holding in its written decision filed at Shanghai on April 20, 1920, that the letter of August 27, 1918 (Plaintiff's Exhibit "C") was a supplemental contract to the contract dated May 18, 1918 (Plaintiff's Exhibit "A")

containing all the terms and conditions of said contract of May 18, 1919 (Plaintiff's Exhibit "A").

15th.

That the said court erred in not holding in its written decision filed at Shanghai on April 20th, 1920, that the satisfactory service clause of the contract dated May 18, 1918 (Plaintiff's Exhibit "A") i. e. "Satisfactory service. The undertaking herein contained on our part are all conditioned upon your doing your work in a satisfactory manner," was a part and parcel of said contract of August 27, 1918 (Plaintiff's Exhibit "C"). [296]

16th.

That the said court erred in not holding in its written decision filed at Shanghai on April 20, 1920, that the contract of May 18, 1918 (Plaintiff's Exhibit "A") was void and of no effect, having been abrogated by the contract of August 27, 1918 (Plaintiff's Exhibit "C").

17th.

That the said court erred in not holding in its written decision filed at Shanghai, on April 20, 1920, that "it could not inquire into the reasonableness of defendant's dissatisfaction."

18th.

That the said court erred in holding in its written decision filed at Shanghai on April 20, 1920 that "it could inquire and decide whether or not the discharge was really because of the way plaintiff did his work or on some other grounds."

19th.

That the said court erred in not holding in its writ-

ten decision filed at Shanghai on April 20, 1920 that the burden of proving whether or not the master acted in good faith in discharging the servant was upon the plaintiff.

20th.

That said court erred in not finding the following exhibit and testimony to be conclusive and binding upon it as to the unsatisfactoriness of the defendant in error's services rendered under the contract alleged in plaintiff's petition (Exhibit "A") and the letter of August 27, 1918 (Exhibit "C"). Said exhibit and testimony are as follows:

May 10th, 1919.

Honorable William Potter,
c/o American Embassy,
Tokyo.

Dear Sir:

We acknowledge your letter of the 2d instant [297] and wish to express our appreciation of your willingness to arbitrate the differences which have arisen between our Company and Mr. A. T. Steele. We further desire to record our appreciation of the good offices of his Excellency Ambassador Morris, which have resulted in your undertaking this task.

In the beginning we wish to explain that it has never been our intention to evade our responsibilities or disregard Mr. Steele's rights under his contract.

The correspondence submitted will show you that Mr. Steele was originally employed on behalf of our Shanghai office, but later on he was held at Tokyo

to assume, temporarily, the duties of Mr. Boyd, while the latter took a short holiday.

In the meantime it developed that Mr. Steele's services were not required at Shanghai, and we at once began negotiating with him for the cancellation of his contract. In view of the fact that he had been originally employed by Mr. Ward in San Francisco, who was a personal friend of his, we recommended that the matter should be referred to him for settlement, and we had every reason to believe that this arrangement would be entirely satisfactory.

You will note that we gave Mr. Steele written notice that his services with this office would terminate on Mr. Boyd's return to Tokyo. He took no exception to this arrangement at the time, and in fact as late as April 29th, he told the writer and Mr. Mauger, the agent of the Tokyo office, that he would turn over his duties to Mr. Boyd the following day. This however he failed to do notwithstanding our repeated requests. Owing to his arbitrary and unwarranted actions our business was seriously interfered with for several days.

As an instance of the inconvenience we were subjected to we would say that our accountant's safe remained closed for two days, during which time we were deprived of the use of our securities and other important documents.

During this time we had agreed to Mr. Steele's demand for an arbitration so we contend that there was no ground for his arbitrary and illegal action.

We might point out that Mr. Steele's rights under his contract would have been just as secure without

this "hold up" and we feel sure you will agree with this statement.

We would finally put on record that it was not until the 8th inst. that Mr. Steele handed over the last of our keys which were in his possession.

We now come to the character of Mr. Steele's work while he was in this office. He adopted the attitude from the start that our system of bookkeeping was all wrong, and this of course led to more or less friction and unpleasantness.

During the first few months of his stay here his attendance on the office was so irregular as to cause great hindrance to our business. It very frequently happened that he did not turn up at the office until 9:30 o'clock, sometimes 10 o'clock, or even later—this in spite of the fact that a notice is posted that our office hours are from 9 o'clock.

If required we can offer numerous witnesses to prove the correctness of the above statements. [298]

On three occasions the writer called Mr. Steele to task for his disregard of our office rules, and during one of these interviews we told him that if he found it imposible to comply with our regulations he had better return to San Francisco. Notwithstanding our repeated admonitions he still persisted in ignoring the office rules, and we submit that on this point alone we could have found sufficient justification for cancelling his contract.

We now wish to discuss Mr. Steele's unauthorized correspondence on affairs pertaining to our office.

We enclose copies of his letters of April 17th and

April 24th addressed to Mr. L. A. Ward of San Francisco.

These copies are certified to us by Miss Paul who was our stenographer at the time they were written, but who has since left our employ. She is, however, still in Yokohama and would be willing to answer any questions if called upon to do so.

Mr. Steele told the writer that he had addressed certain letters to Mr. Ward, but never mentioned their character; he also intimated that he had taken an extra copy for our files, but at the same time never offered to hand them over.

We now have every reason to believe that his apparent willingness that we should see this correspondence was pure camouflage as it must be apparent to anyone that had we seen the letter of April 24th, it would never have left our office.

Since the beginning of this month we have repeatedly asked Mr. Steele, both verbally and in writing (see copy of our letter of May 6th) for copies of his correspondence with Mr. Ward, but up to this writing he has failed to comply.

We might explain that the addressee of these letters is the Vice President and General Manager of the American Trading Company (Pacific Coast), a Company with which we are associated, but which is a separate and distinct organization.

Mr. Ward has no jurisdiction over this office and is not even an employee of the American Trading Company proper.

We do not even intimate that Mr. Ward was a party to this clandestine correspondence and we even

believe that he will disavow any connection with it.

We do not know how many more letters were written or the nature of their contents, but the opening paragraph of the letter of April 17th furnishes proof that there were others. This paragraph also shows that Mr. Steele was keeping Mr. Ward advised of "developments."

We would also like to call your attention to the first paragraph of the letter of April 24th in support of our statement that we thought Mr. Steele was agreeable to handing over his duties to Mr. Boyd on the latter's return.

We do not undertake to deal in detail with the balance of the subject-matter of this letter, but we might remark that against Mr. Steele eight months service in the Company the men who he subjects to such severe criticisms and innuendoes have the following records:—

Mr. Blake, 23 years, Mr. Mauer, 20 years, Mr. Boyd, 17 years and Mr. Moss 9 years. [299]

We would further mention that Mr. Mauger previous to coming to Tokyo, was the chief accountant of our company in New York for a number of years, and is, presumably, as capable a man on books as Mr. Steele, and also has the welfare of the Company quite as much at heart.

We submit that Mr. Steele in carrying on such correspondence was practicing both deception and treachery, and on either count he had committed an unpardonable offense.

If he acted with a realization of what he was doing then certainly he has no excuse to offer, but on the

other hand if he pleads ignorance, he convicts himself of being deficient in the most elementary principals of business.

It seems incredible that any man endowed with ordinary intelligence could *do* abuse the confidence of his employers as Mr. Steele has done in carrying on this correspondence.

We would respectfully submit for your consideration the following points:—

1. Would Mr. Steele have been justified in writing such a letter as that of April 24th, even to the head office of the Company, without the knowledge and consent of his superior officer?

2. Assuming for arguments sake that your answer to the above is in the affirmative, would he have been justified in sending the same letter to a man who had no connection whatever with the office which employed him?

3. Having committed this office has he not proven himself irresponsible and untrustworthy?

4. In view of all the other facts would we not have had good and sufficient grounds for dismissing him from our office?

In conclusion we have to say that under ordinary circumstances we would have had no other thought than to treat Mr. Steele liberally, but in view of the unsatisfactory character of his work and the treachery he has displayed toward his office and employers, we now prefer that the case be settled entirely on its merits.

Respectfully submitting the above, and with re-

newed thanks for your kind assistance, we remain,

Yours very truly,

Page 24 Bill of Exceptions.

Q. Now you stated that you objected to Mr Steele's coming out here.

A. I objected, to Mr. Ward, after meeting him.

Q. For what reason?

A. On account of his personality. [300]

Pages 26 to 32 Bill of Exceptions.

Q. Now when you first saw Mr. Steele did you approve of him? A. No.

Q. Why didn't you approve of him?

A. As I stated to Mr. Ward after my conversation with Mr. Steele that I thought a mistake had been made, as Mr. Ward told me that Mr. Steele was born of Indian and American parentage in India, and that whatever our feelings might be in the matter, that there was strong prejudice against Eurasians in China and that as chief accountant in our office he would find it very difficult to deal with these objections in China.

Q. You were merely considering the unfortunate position that people like him were placed in Shanghai?

A. Yes.

Q. You had no prejudice against him personally?

A. None whatsoever at that time.

Q. It is a fact, isn't it, that in Shanghai people in a position like that Mr. Steele was to occupy, would have to consult with Managers of the Banks and with other Managers of other companies?

A. Yes, especially the managers of Banks.

Q. And where a man has to do a thing of that sort he has to be a man that has some social standing in that community? [301]

Q. Did you have any conversation with Mr. Blake relative to the manner in which Mr. Steele rendered his services in Tokyo? A. Yes.

Q. State to the Court in substance what those conversation were.

Mr. FESSENDEN.—I object on the ground that the evidence is hearsay.

The COURT.—This evidence is admissible under the order of January 14th, 1920. Objection overruled.

Q. Will you state the substance of your conversation with Mr. Blake regarding the services rendered by Mr. Steele at the Tokyo office?

A. When I arrived at Yokohama on my way back to Shanghai after a furlough, Mr. Blake spoke to me about Mr. Steele and said his services had been most unsatisfactory. That he had been very dilatory, came to the office at 9:30, 10:00, etc., and when Mr. Blake spoke to him, told him, if he didn't mend his ways he had better go back to San Francisco. Said he was a great disturber in the office, that he objected to methods laid down by his superiors, that he had taken on writing for the newspapers and had written articles which, if traced back to an employee of the American Trading Company might injure its business, and that all in all he would be a most unsatisfactory man for me to accept for Shanghai, and I told him that under these circumstances that I wish that he would make an arrangement with Mr.

Steele to cancel any arrangements that might have been made to [302] come to Shanghai, and that if there was any expense attached thereto that while I didn't consider it my business, the Shanghai office would most willingly stand it rather than have Mr. Steele come on to the Shanghai office.

Q. And the reasons you have stated for not wanting Mr. Steele were brought about on account of what Mr. Blake told you? A. Yes.

Q. And did you receive any correspondence or any letters from Mr. Blake regarding the unsatisfactoriness or inefficiency rendered by Mr. Steele?

A. I did eventually receive a letter from Mr. Blake enclosing all correspondence with Mr. Steele and the arbitrator's ward and the decision of the arbitrator regarding this matter.

(Defendant's exhibit 1 accepted in evidence).

(Handing witness Defendant's Exhibit 2.) Accepted as evidence.

Q. What is this letter?

A. An enclosure received from Mr. Blake in a letter which has been submitted to the Court, being Mr. Blake's brief to Mr. Potter in the arbitration arranged between Mr. Steele and the American Trading Company of Tokyo.

Q. Did you write to Mr. Blake and ask him for the documents and papers in the Steele matter?

A. I did.

Q. And as a result of that letter you received a letter dated June 10th, 1919.

A. Yes.

Q. And in that letter this was enclosed?

A. Yes. He stated in that letter that he was [303] Handing me all of these papers covering the entire case and awaiting the decision of the arbitrator, which he sent with it.

Q. What is this, Mr. Burns?

A. A letter from Mr. Steele to Mr. Blake, dated March 19, Tokyo.

Handing witness Defendant's Exhibit No. 4.

Q. What is that, Mr. Burns?

A. The decision of Mr. Potter, the arbitrator, in the case of Steele vs. Blake.

Q. Was that enclosed in the letter of June 10th?

A. Yes, it is specifically mentioned in that letter.

Q. Did you write to Mr. Blake asking for the papers in the Steele matter? A. Yes.

Q. And as a result of that letter you received a letter of June 10th, enclosing—including enclosures, one of which is this? A. Yes.

Q. (Handing witness Defendant's Exhibit No. 5). What is this, Mr. Burns?

A. A letter written by Steele to Ward.

Q. Was that included in the letter of June 10th?

A. Yes.

Q. The letter of June 10th was an answer to a letter that you wrote requesting Mr. Blake to send you all the papers in the Steele matter? [304]

A. Yes.

Q. And this was enclosed in that letter?

A. Yes.

(Handing witness Defendant's Exhibit No. 6).

Q. What is this, Mr. Burns?

A. Another letter written by Steele to Ward, dated April 17.

Q. Was that enclosed in the letter of June 10th?

A. Yes.

Q. And the letter of June 10th was in answer to a request for all papers in the Steele matter?

A. Yes.

Q. And this was enclosed in the letter of June 10th? A. Yes.

(Handing witness Defendant's Exhibit No. 7.)

Q. What is this, Mr. Burns?

A. A letter from Mr. Steele dated March 19th.

Q. (Handing witness Defendant's Exhibit No. 8.)

What is this, Mr. Burns?

A. A letter from Mr. Blake to Mr. Steele dated May 6th.

Q. Was this enclosed in the letter of June 10th?

A. It was.

Q. (Handing witness Defendant's Exhibit No. 9.)

What is this, Mr. Burns?

A. Letter from Mr. Blake to Mr. Steele, dated March 19th.

Q. Was that enclosed in the letter of June 10th?

A. Yes.

Q. (Handing witness Defendant's Exhibit No. 10.)

Now, what is this, Mr. Burns?

A. Letter of Mr. Blake addressed to Mr. Ward, San Francisco, dated March 19th. [305]

Q. This was enclosed in the letter of June 10th?

A. Yes.

Defendant's Exhibits 1 to 10, inclusive, offered in evidence.

Mr. FESSENDEN.—I object to the admission of Defendant's Exhibits Nos. 2, 5, 6, 8, 3 and 10 on the ground that they are inadmissible under the order of January 14th, 1920.

The COURT.—Ruling reserved.

Seventh Exception.

To which ruling of the Court the defendant then and there excepted.

Q. Mr. Burns, where are,—as far as you know, where are the original letters of which the one is enclosed in the letter of June 10th, are copied?

A. In the case of the papers relating to the arbitration, they are in the hands of Mr. Potter, the arbitrator, who has left Tokyo and has gone to Philadelphia, and Mr. Blake, who has gone to London to take charge of our London office.

Q. Have you endeavored to get a certified copy of these?

A. Yes, we tried to get it from the Minister at Tokyo and he said it should be obtained from Mr. Potter and we have cabled to America to try to get copies of all the papers in the arbitration.

Q. You have used every effort to try to get the original papers or certified copies? A. Yes.

Q. And up to the present you have not been able to get them?

A. They have not come as yet, I telegraphed Mr. [306] Blake at San Francisco, and at New York. The Tokyo office have. It is out of my jurisdiction completely.

Q. Mr. Blake is the only one who had any direct knowledge of this matter? The only one in authority?

A. The matter was entirely in his hands as general manager of the Company for the Far East.

Q. Has Mr. Steele ever come to the office in Shanghai and offered to enter into employment of the— A. Never.

21st.

That the said Court erred in not holding in its written decision filed at Shanghai on April 20th, 1920, that the personality of the plaintiff was a ground for dismissal.

22d.

That said Court erred in finding that the contract alleged in defendant in error's petition (Exhibit "A") was wrongfully terminated by the plaintiff in error.

23d.

That the said Court erred in holding in its written decision filed at Shanghai on April 20th, 1920, that the following award was void and contrary to law:

Defendant's Exhibit No. 4.

Arbitration of case A. Tilton Steele vs. D. H. Blake, Vice President, American Trading Co. Tokyo, Japan.

Mr. A. Tilton Steele has a contract with the American Trading Co. (Pacific Coast) a company which Mr. D. H. Blake states is an *associated* but with a separate and distinct organization from his American Trading Co. in Tokyo. The American

Trading Co. (Pacific Coast) signed by Lewis A. Ward, Vice President and Manager makes a three year contract from July [307] 1st, 1918, with Mr. Steele as chief accountant at their Shanghai office including transportation thereto. On his way to Shanghai Mr. Steele was stopped at Yokohama by wireless from Mr. Blake and requested to assume temporarily the duties of a Mr. Boyd of the Tokyo office while the latter was away on holiday. In the meantime it is developed that Mr. Steele's services were not needed at Shanghai and Mr. Blake states in writing that he began to negotiate with Mr. Steele for a cancellation of his contract and recommends to Mr. Steele that the matter should be referred to Mr. Lewis A. Ward, vice-president and manager of the American Trading Co. (Pacific Coast) who had made the contract hereinbefore mentioned. Mr. Blake also writes that he never had any intention to disregard Mr. Steele's rights under this contract. In Mr. Blake's letter dated March 19th, 1919, he writes in part as follows: "We have received word from Mr. Burns, agent of Shanghai office that as he has made satisfactory arrangements with Mr. Manley (the chief accountant whose position under the contract Mr. Steele was to take) to remain with the Company, he Mr. Burns did not now wish Mr. Steele to come to Shanghai. We also confirm our statement that as soon as Mr. Boyd returns to his position in Tokyo, probably about the end of April we have no further use for your services here, we cannot say what your recourse will be under your contract, but

as intimated the other day the writer will be glad to render you such assistance as he can in order to effect a mutual satisfactory settlement—but before anything can be done in this connection it will be necessary for you to make some suggestions in the premises.”

Mr. Blake's next letter is May 6th, in which he demands the return of a number of keys which he claims belong to the company and notifies Mr. Steele that he has a debit balance of Yen 541.21 which he asks payment of at once to Mr. Blake. Mr. Blake's letter to Mr. Steele dated August 27th, 1918, employs him temporarily in Tokyo for practically the same salary as his contract, said temporary employment to be for such time as Mr. Boyd is absent on holiday, which Mr. Blake estimates will be about six months. Mr. Blake further adds in this letter this time will of course apply to Mr. Steele's three years' term as mentioned in original contract. Mr. Blake concludes this letter as follows: “It is understood between us that this temporary arrangement does not prejudice any verbal understanding which you (Mr. Steele) may have had with Mr. Ward or with Mr. Burns prior to your departure from San Francisco.

Mr. Steele also claims that he had a verbal understanding in San Francisco with Mr. Burns of the Shanghai office, that his passage back to San Francisco including all legitimate traveling expenses were to be paid by the Company and that both Mr. Ward and Mr. Burns stated to

him (Mr. Steele) that this was the custom of the company in all cases of covenanted servants and that Mr. Steele would of course be treated in the same way.

After reading over carefully the briefs which have been submitted by both Mr. Blake and Mr. Steele [308] I am of the opinion that the matter of the three year contract should be referred to Mr. Ward in San Francisco for settlement.

Second: That Mr. Blake should pay Mr. Steele in full until such time as Mr. Steele can secure first class passage back to San Francisco less any indebtedness that may be proved that Mr. Steele owes Mr. Blake.

Hoping that this conclusion may be mutually satisfactory, I am, gentlemen,

Yours very sincerely,

(Signed)

P. S. Mr. Steele's passage to San Francisco to be paid by Mr. Blake's Corp.

To Mr. D. H. Blake,

Vice-president American Trading Co.,

Tokyo, Japan.

24th.

That the said Court erred in holding in its written decision filed at Shanghai on April 20th, 1920, that the plaintiff was entitled to recover as damages the unpaid balance of his guaranteed compensation, to wit: the sum of Seven Thousand Five Hundred Dollars (\$7,500.00).

25th.

That the said Court in its written decision filed at Shanghai on April 20th, 1920, erred in not deducting from the amount of plaintiff's judgment item 10 of Plaintiff's Exhibit B, which said exhibit is attached to plaintiff's petition, which said item reads as follows: "Item 10" By balance at debit on current account of self as on May 1, 1919, as per statement rendered.

(Exhibit Q1):— Mex. \$507. Yen 545.21."
26th.

That the said Court erred in not ruling upon plaintiff in error's amended plea in abatement filed at Shanghai, China, November 28, 1919, by counsel for plaintiff in error, before the trial of said cause.
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27th.

That said Court erred in not ruling upon plaintiff in error's amended motion filed at Shanghai, China, on January 9th, 1920, which motion was for the taking of the depositions of Mr. Potter, Mr. Ward and Mr. Blake.

28th.

That said Court erred in overruling plaintiff in error's motion filed at Shanghai, China, on January 13, 1920, to take the deposition on commission of D. H. Blake by an order filed at Shanghai, China, on January 14, 1920, for the following reasons:

1st. That on account of such motion being overruled, the plaintiff in error was barred from call-

ing any direct evidence as to the satisfactory services of the defendant in error.

2d. That the allegations contained in the affidavit in support of said motion were not admitted by the defendant in error, and the letters (Plaintiff in Error's Exhibits 2, 5, 6, 8, 3 and 10) were not construed by the Court as evidence worthy of consideration.

29th.

That the said Court erred in not entering judgment in favor of the plaintiff in error and against the defendant in error.

WHEREFORE defendant prays that said judgment be reversed and that the defendant be allowed to depart hence and recover its costs.

HEMING, DAVIES & BRYAN,

Attorneys for Defendant.

Filed at Shanghai, China, Aug. 27, 1920. James P. Connolly, Clerk. [310]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Bond on Writ of Error.

Know All Men by These Presents: That we, the American Trading Co., as principals, and the Asia Banking Corporation, as surety, are held firmly bound unto A. T. Steele in the full and just sum of seven thousand five hundred dollars (\$7,500.00) United States Gold coin, minus the sum of fifty dollars (\$50.00) Mexican currency, to be paid to the said A. T. Steele, his certain attorneys, successors or assigns; to which payment well and truly to be made we bind ourselves and our successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of April, 1920.

WHEREAS lately in the United States Court for China in a suit pending in said court between A. T. Steele as plaintiff and the American Trading Co., as defendant, a judgment was rendered against the said American Trading Co. and the said American Trading Co., having obtained by order of court one month from the date of judgment, to wit, one month from April 20, 1920, in which to file a bill of exceptions to said judgment, a copy of which together with a petition for a writ of error will be filed in the clerk's office of said court on or before the 20th [311] day of April, 1920. Now, the condition of the above obligation is such that if the said American Trading Co. shall prosecute said writ of error which is to be obtained to effect and answer all damages and costs, if it fails to make the said plea good, then the above

obligation shall be void, otherwise to remain in full force and virtue.

AMERICAN TRADING CO.,
(Sgd.) W. A. BURNS,
ASIA BANKING CORP.,
(Sgd.) By E. McQUADE.

Approved:

(Sgd.) CHARLES S. LOBINGIER,
Judge.

Filed at Shanghai, China, April 26, 1920 James
P. Connolly, Clerk. [312]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Praeipie for Transcript of Record.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, pursuant to the writ of error allowed in the above-entitled cause and to include in such transcript of record the following and no other papers or exhibits, to wit:

Complaint. Filed July 3, 1919.

Plea in Abatement. Filed July 22, 1919.

Amended Plea in Abatement. Filed Nov. 28, 1919.

Motion and Affidavit for permission to take depositions on commission. Filed Dec. 19, 1919.

Affidavit by J. B. Manley. Filed January 8, 1920.

Amended Motion for permission to take Depositions on commission. Filed Jan. 9, 1920.

Order allowing defendant to file amended answer. Filed Jan. 9, 1920.

Affidavit by W. A. Burns. Filed Jan. 13, 1920.

Motion for taking of Depositions on Commission. Filed January 13, 1920.

Order overruling motion to take Depositions on Commission. Filed Jan. 14, 1920.

Amended Answer filed on January 16, 1920.

Replication filed on January 21, 1920.

Defendant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

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Plaintiff's Exhibits A, B, C, D, E, F, G, H.

Decision filed April 20, 1920.

Notice of Appeal. Filed April 21, 1920.

Bond on Writ of Error. Filed April 26, 1920.

Motion for further time in which to affect its appeal. Filed May 22, 1920.

Order extending time to file bill of exceptions.

Petition for Writ of Error.

Bill of Exceptions. Filed Aug. 27, 1920.

Defendant's Assignment of Errors. Filed Aug. 27, 1920.

Writ of Error.

Citation on Writ of Error and Service of Same.

Order Allowing Writ of Error.

Praeceptum for Transcript.

Order extending time to file Record in Circuit Court of Appeals.

And file said transcript with the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

HEMING, DAVIES & BRYAN,
Attorneys for Defendant.

Filed at Shanghai, China, Aug. 27, 1920. James P. Connolly, Clerk. [314]

In the United States Court for China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Writ of Error.

THE UNITED STATES OF AMERICA,—ss.

The President of the United States of America: To the Honorable Judge of the United States Court for China, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in

the said United States Court for China, before you, between A. T. Steele, plaintiff, and the American Trading Co., defendant, a manifest error hath happened, to the great damage of the said American Trading Co., defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do commend you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same at San Francisco, in said Circuit, on the 15th day of October next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct [315] that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 14 day of August, 1920.

CHARLES L. LOBINGIER,

Judge of the United States Court for China.

Attested: JAMES P. CONNOLLY,

Clerk of the United States Court for China.

Filed at Shanghai, China, Aug. 27, 1920. James P. Connolly, Clerk. [316]

**Certificate of Clerk United States Court for China
to Transcript of Record.**

Cause No. 798.

Civil No. 272.

Shanghai, China,—ss.

In pursuance of the command of the writ of error within, I, James P. Connolly, Clerk of the United States Court for China, herewith transmit a true copy of the record, bill of exceptions, assignment of errors and all proceedings in this case of A. T. Steele, the Plaintiff, vs. the American Trading Co., the Defendant, lately pending in the United States Court for China, under my hand and the Seal of said Court.

Witness my official signature and the seal of said United States Court for China at the City of Shanghai, within the jurisdiction of said court this 27 day of August, 1920.

[Seal] JAMES P. CONNOLLY,

Clerk of the United States Court for China.

Filed at Shanghai, Aug. 27—1920. James P. Connolly, Clerk. [317]

In the United States Court of China.

Cause No. 798.

Civil No. 272.

A. T. STEELE,

Plaintiff,

vs.

AMERICAN TRADING CO.,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

To A. T. Steele, GREETING:

You are hereby cited and admonished to be and appear at the next session of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden at the city of San Francisco, pursuant to a writ of error filed in the office of the Clerk of the United States Court for China, wherein the American Trading Co. is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable CHARLES S. LOBINGIER, Judge of the United States Court for China, this 14th day of August, 1920.

CHARLES S. LOBINGIER,

Judge of the United States Court for China.

We hereby, this 14th day of Sept., 1920, accept

due personal service of this citation on behalf of A. T. Steele, the defendant in error.

JERNIGAN, FESSENDEN & ROSE,

By STERLING FESSENDEN,

Attorneys for Defendant in Error.

Filed at Shanghai, China, Aug. 27, 1920. James P. Connolly, Clerk. [318]

[Endorsed]: No. 3585. United States Circuit Court of Appeals for the Ninth Circuit. American Trading Company, a Corporation, Plaintiff in Error, vs. A. T. Steele, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Court for China.

Filed October 7, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.